136 U S 479

136-479

TRANSCRIPT OF RECORD.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 2, ORIGINAL.

THE STATE OF INDIANA, COMPLAINANT,

vs.

THE STATE OF KENTUCKY.

BILL IN EQUITY.

FILED OCTOBER 12, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 2, ORIGINAL.

THE STATE OF INDIANA, COMPLAINANT,

vs.

THE STATE OF KENTUCKY.

BILL IN EQUITY.

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1 Supreme Court of the United States. October Term, 1887.

At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the tenth day of the same month), in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth, the Supreme Court of the United States met agreeably to law.

And afterwards, to wit, on the 11th day of October, A. D. 1887, the following entry appears of record, viz:

2 THE STATE OF INDIANA, Complainant,

vs.

THE STATE OF KENTUCKY.

Mr. John C. Fay, in behalf of counsel for the complainant, submitted to the consideration of the court a motion for leave to file a bill in equity.

And on the same day, to wit, on the 11th day of October, A. D. 1887, the motion for leave to file bill was filed, in the words and figures following, viz:

3 In the Supreme Court of the United States, of October Term, A. D. 1887.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY. } In Equity.

Comes now the State of Indiana, by J. E. McDonald and John M. Butler, her solicitors, and moves the court for leave to file her original bill of complaint in said court against the State of Kentucky, the original of which is attached hereto and made a part of this motion, and copies of which are filed herewith pursuant to the rules of this court.

THE STATE OF INDIANA,
By J. E. McDONALD AND
JOHN M. BUTLER,
Her Solicitors.

4 (Endorsed:) Sup. Court U. S. 1887, Oct'r term. No. 7, original. The State of Indiana, compl't, *vs.* The State of Kentucky. Motion for leave to file bill. Filed Oct. 11, 1887.

5 And afterwards, to wit, on the 12th day of October, A. D. 1887, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY.

On consideration of the motion for leave to file the bill of complaint, it is now here ordered by the court that said motion be, and the same is hereby, granted, and that process issue as
6 prayed for, returnable on the first Monday in January next.

And on the same day, to wit, October 12, A. D. 1887, the bill of complaint was filed, in the words and figures following, viz:

In the Supreme Court of the United States, of October Term, 1887.

THE STATE OF INDIANA
v.
THE STATE OF KENTUCKY. } Bill in Equity.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States, in chancery sitting:

In pursuance of an act of the Legislature of the State of Indiana, approved February 25, 1887, entitled "An act in relation to Green River Island," the State of Indiana brings this her original bill. Whereupon, humbly complaining, your oratrix, the State of Indiana, respectfully showeth—

That on the 11th day of December, 1816, your oratrix was admitted by the Congress of the United States into the Union to be one of the United States of America, upon an equal footing with the original States in all respects whatsoever, with the fol-
7 lowing boundaries, to wit: "Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said river; and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by the said east and west line until the same shall intersect the first-mentioned meridian line which forms the western boundary of the State of Ohio;" and from thence your oratrix hath been and still is one of the United States of America, entitled to and enjoying all the sovereign rights, powers, and prerogatives which belonged to or in any manner appertained to the original States of the Union, and full power to exercise all such sovereign rights over the territory aforesaid as the said original States might or could exercise over the territories within their respective limits.

Your oratrix further showeth that the State of Kentucky is also one of the United States of America and was duly admitted into the Union by the Congress of the United States on the first day of June, 1792, by the name and style of "the State of Kentucky," as a new and entire member of the United States of America, according to its actual boundaries as they existed on the 18th day of Decem-
8 ber, 1789; that theretofore the said State of Kentucky and the territory embraced therein had belonged to and formed part of the Commonwealth of Virginia, which was one of the original States of the United States, and that said admission by the Congress of the United States was by and with the consent of the said Commonwealth of Virginia; that by the act of cession of the Commonwealth of Virginia, duly enacted in 1783, the said Commonwealth of Virginia ceded to the United States of America all her right, title, and claim, as well of soil as of jurisdiction, which she had to the territory or tract of country within the limits of the Virginia charter, lying and being to the northwest of the Ohio river, and authorized her delegates in Congress, or such of them as should there assemble, by deeds or instruments in writing, under their hands and seals, to convey, transfer, assign, and make over to the United States of America, in Congress assembled, for the benefit of said States, all said right, title, and claim of the said Commonwealth of Virginia, as well of soil as of jurisdiction, in and to the territory aforesaid, and which deed of cession was duly executed by the delegates of said Commonwealth assembled in Congress on the first day of March, 1784; that the northern or northwestern boundary of said State of Kentucky at the time of its said admission was and still is the Ohio river, being the territory bordering on and southwest of the territory theretofore ceded under the acts and proceedings aforesaid to the United States by the State of Virginia; that said boundary line of said State of Kentucky extended from a point above the southeastern corner of the said State of In-
9 diana to a point below the southwestern corner of said State, as marked by said Ohio river, which said boundary line between the said States of Kentucky and Indiana became and was and still is, as your oratrix avers, the northwestern shore of the said Ohio river, as the same is defined by the low-water mark of said river, that being the common boundary between the said States; and that all of the territory lying on the northwestern shore of the Ohio river on said common boundary, and attached to said shore at low water in said river, was and is a part of the territory of the State of Indiana, and subject to its proper jurisdiction and control.

Your oratrix further showeth that in the county of Vanderburgh, in said State of Indiana, and opposite to the southeast quarter of section 31, in township 6, and sections 6, 5, 8, 9, 16, 15, and 14, in township 7 south,* of range 10 west, and, as your oratrix claims, forming a part of and properly belonging to said townships 6 and 7, there is a strip, tract, or parcel of land extending for a distance of about six miles in length, with an average width of about one-third

* See order of court of January 28, 1889.

of a mile, commonly called "Green River Island," that now is and for more than twenty years last past, to wit, since the admission into the Union of said State as one of the United States of America, has been attached to and forms a part of the said northwestern shore of the Ohio river, and is at all times at low water accessible to said shore, free from any water obstructions, and only when the Ohio river is swollen and has risen above its natural stage and condition is there any water passing between the said so-called island and the main-
10 land on the Indiana side, and for more than ten months each year there is free ingress and egress from said main-land to the said so-called island free from any water obstruction; and your oratrix avers that low water at that point of the said river on the north or northwestern shore thereof is and for more than twenty years has been along the south or southeastern margin of the so-called island, running the entire length of the same. Wherefore your oratrix claims that the said so-called "Green River Island" is and was a part of the territory of your oratrix as defined by the enabling act passed by the Congress of the United States, above referred to, and in pursuance of which your oratrix became a State of the Union; that during all the time aforesaid your oratrix charges that the said State of Kentucky has claimed the so-called "Green River Island" to be within her limits and has wrongfully and without right asserted, claimed, and exercised jurisdiction over said tract of land and has excluded the State of Indiana therefrom in defiance of her authority and contrary to her rights.

Your oratrix further showeth that in said section 15, and opposite to the upper portion of the so-called Green River Island, there is a strip of land, forming a part of the northwestern shore of the said Ohio river, of about one-half mile in length and of the average width of one-fourth of a mile, over which the State of Indiana has heretofore and still does rightfully exercise jurisdiction and control; but recently the State of Kentucky has set up and asserted a claim to the last-described tract and has endeavored to extend its
11 laws and jurisdiction over the inhabitants and property rights existing on the same; all of which your oratrix charges is a manifest invasion of her sovereign rights and tends to the disturbance of that amity and peace that ought to exist between the authorities of the two States, and to the manifest injury of the citizens who own property within the disputed limits.

In consideration whereof and forasmuch as your oratrix can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable, and in this court by original bill, to the end and for the purpose of determining and settling the boundary of the said State of Indiana with relation to Green River Island and to determine and put at rest questions which now exist as to whether the said island and the other parcel of land herein described or either of them are within the boundary and jurisdiction of the State of Indiana or of the State of Kentucky, your oratrix prays that she be permitted to file this her bill of complaint against the said State of Kentucky, and that the said State of Kentucky be made a defendant hereto, and that a

proper subpœna in chancery (or such process as is recognized by this court in like cases) issue herein against the said State of Kentucky, commanding her by a day named therein to appear and to make a full and complete answer, under the corporate seal of said State, of all and singular the matters aforesaid as fully and particularly as if the same were here repeated in the form of distinct interrogatories, and more particularly that the said State of Kentucky shall set
12 forth and define specifically the claim that she hath or may make to the said territory in dispute, and that upon final hearing your honors may enter a decree establishing the rights of your said oratrix as claimed in her said bill, and for such other and further relief in the premises as the nature and circumstances in this case may require and as to your honors shall seem meet and proper; and as in duty bound your oratrix will ever pray.

THE STATE OF INDIANA,
Complainant.

J. E. McDONALD &
JOHN M. BUTLER, *Her Solicitors.*

13 (Endorsed:) In the Supreme Court of the United States. No. 7, original. Of October term, 1887. The State of Indiana *v.* The State of Kentucky. Bill in equity. Filed Oct'r 12, 1887. McDonald & Butler, solicitors for complainant.

14 And afterwards, to wit, on the 24th day of October, A. D. 1887, a writ of subpœna and certified copies of the bill of complaint were issued to the marshal; which said subpœna is in the words and figures following, viz.:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State of Kentucky, Greeting:

[Seal of the Supreme Court of the United States.]

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court, holding jurisdiction in equity, on the first Monday of January next, at the
15 city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Indiana, in the said court exhibited against you. Hereof you are not to fail at your peril.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at the city of Washington, the twenty-fourth day of October, A. D. 1887.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

And afterwards, to wit, on the 5th day of November, A. D. 1887, the said subpœna was returned and filed with the following endorsements thereon, viz.:

SUPREME COURT OF THE U. S.,
MARSHAL'S OFFICE, *Oct.* 24, 1887.

16 I, John G. Nicolay, marshal of the Supreme Court of the United States, do hereby authorize and deputize Andrew J. Cross United States marshal to serve the foregoing writ and to make due return thereof.

JNO. G. NICOLAY, *Marshal.*

I certify that I have this 2nd day of November, A. D. 1887, served the within writ at Frankfort, Kentucky, by reading the same to Simon B. Buckner, Governor of the State of Kentucky, and by showing him the seal thereof, and by delivering to him a copy of the same with its accompanying papers; and I do further certify that I have also, this 3rd day of November, A. D. 1887, served the
17 said writ at Louisville, Kentucky, by reading the same to P. W. Hardin, attorney general of the said State of Kentucky, and showing him the seal thereof, and by delivering to him a copy of the same with its accompanying papers.

JOHN G. NICOLAY, *Marshal,*
By A. J. GROSS,
U. S. Marshal and Deputy as Aforesaid.

Marshal's fees:

Executing summons & copies	4 00
Expenses	6 00
	$10 00

(Endorsed:) Supreme Court U. S. 1887, October term. No. 7, original. The State of Indiana, complainant, *vs.* The State of Kentucky. Subpœna and proof of service of same on Governor and attorney general of Kentucky. Office Supreme Court U. S. Filed Nov. 5, 1887. James H. McKenney, clerk.

18 And afterwards, to wit, on the 4th day of January, A. D. 1888, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 7, Original.

Mr. J. Proctor Knott, of counsel for the defendant, by leave of the court, filed the answer of the defendant herein.

And on the same day, to wit, on the 4th day of January, A. D. 1888, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 7, Original.

19 On motion of Mr. J. Proctor Knott, of counsel for the defendant, leave is hereby granted him to withdraw the answer of the defendant filed herein, and the time for refiling same is extended until the 11th instant.

And afterwards, to wit, on the 11th day of January, A. D. 1888, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 7, Original.

Mr. J. Proctor Knott, of counsel for the defendant, asked and obtained leave of the court to file a stipulation of counsel as to the manner of procedure in this cause.

20 And on the same day, to wit, the 11th day of January, A. D. 1888, the following stipulation of counsel was filed, viz:

In the Supreme Court of the United States.

THE STATE OF INDIANA *vs.* THE STATE OF KENTUCKY.

It is hereby stipulated—

1. That the answer of the State of Kentucky and the answer of the State of Indiana to any cross-bill filed herein may be filed without the formality of verification.

2. That, upon the cause being put at issue, depositions may be taken by either party before an officer authorized to take depositions by the laws of the States of Indiana or Kentucky, upon due
21 notice to the adverse party, and if taken before an officer having an official seal no other authentication shall be required.

3. That duly authenticated copies of any records, maps, or official documents may be filed by either party with the clerk as evidence in the cause upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence.

4. That the testimony in the cause shall be closed on or before the first Monday in October, unless, for cause shown, an extension of time shall be given.

McDONALD & BUTLER,
Att'ys for Indiana.
J. PROCTOR KNOTT &
P. W. HARDIN, *Att'ys for K'y.*

22 (Endorsed:) Sup. Court U. S. 1887, Octo. term. No. 7, original. The State of Indiana, complainant, *vs.* The State of Kentucky. Stipulation as to manner of procedure. Filed Jan'y 11, 1888.

And on the same day, to wit, on the 11th day of January, A. D. 1888, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY, } No. 7, Original.

In pursuance of the stipulation of counsel, filed herein by leave of the court, it is now here ordered by the court—

1. That the answer of the State of Kentucky and the answer of the State of Indiana to any cross-bill filed herein may be
23 filed without the formality of verification by affidavit or certificate and seal of the State.

2. That, upon the cause being put at issue, depositions may be taken by either party before an officer authorized to take depositions by the laws of the States of Indiana or Kentucky, upon due notice to the adverse party, and if taken before an officer having an official seal no other authentication shall be required.

3. That duly authenticated copies of any records, maps, or official documents may be filed by either party with the clerk as evidence in the cause upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence.

4. That the testimony in the cause shall be closed on or
24 before the first Monday in October, unless, for cause shown, an extension of time shall be given.

And on the same day, to wit, on the 11th day of January, A. D. 1888, the following entry appears of record, viz:

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 7, Original.

Mr. J. Proctor Knott, of counsel for the defendant, by leave of the court, filed the answer and cross-bill of the State of Kentucky herein.

And on the same day, to wit, on the 11th day of January, A. D. 1888, the answer and cross-bill of the State of Kentucky was
25 filed in the words and figures following, viz:

In the Supreme Court of the United States. January Term, A. D. 1888. In Chancery.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent.

Answer and Cross-Bill.

McDonald & Butler, attorneys for Indiana; J. Proctor Knott and P. W. Hardin, attorneys for Kentucky.

26 In the Supreme Court of the United States. January Term, A. D. 1888. In Chancery.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent. } Answer and Cross-Bill.

The State of Kentucky, respondent, reserving to herself the advantage of all errors, omissions, irregularities, and insufficiencies in the bill exhibited against her herein by the State of Indiana, complainant, as well as the right to make further answer thereto hereafter if the same should become necessary, says now, in answer to said bill—

That she denies that "the strip, tract, or parcel of land" mentioned in said bill as "Green River Island" is now or ever was "in the county of Vanderburgh, in said State of Indiana;" she denies that said "strip, tract, or parcel of land" forms now or ever did form any part of townships 6 and 7 south, of range 10 west, or that the same has ever in anywise belonged to said townships, or either of them, as in said bill alleged. She further denies that said "strip, tract, or parcel of land" was attached to or formed a part of the northwestern shore of the Ohio river when the State of Indiana was admitted into the Union, or at any time prior
27 thereto; and she also denies that said Green River Island is now or ever was a part of the territory of said State of Indiana. She says it is true that "during all the time since the admission of said State of Indiana into the Union" and for many years prior thereto, namely, ever since the State of Kentucky was admitted into the Union, the said State of Kentucky has claimed said Green River Island to be within her territorial limits, and still so claims; and it is true that during all that time the said State of Kentucky "has asserted, claimed, and exercised jurisdiction over the said tract of land;" but she denies that she has ever done so wrongfully or in defiance of any right of the State of Indiana whatever; for she says that said State of Indiana has not now and has never had any right whatsoever in or to said Green River Island or any part thereof. On the contrary, this respondent avers and charges that said Green River Island was not embraced in the territory ceded by the State of Virginia to the United States in 1783; that said State retained full possession, jurisdiction, and control of said island until the formation and admission of the State of Kentucky into the Union, on the 1st day of June, 1792; that said island is and has always been since that time within the territorial limits and jurisdiction of the State of Kentucky as they then existed and as they still exist; that from that time to the present she has claimed and continually exercised her sovereign rights and authority over the same as fully as over any other portion of her territory; that owners of the soil thereon hold their title thereto under grants made by her as the original proprietor thereof; that the property thereon, amounting to many thousands of dollars in value, has always been assessed for taxation by her legally authorized officials, and the

taxes thereon paid into her treasury; that the residents thereon, possessing the other necessary qualifications, have always
28 voted at her elections as legal voters; that her courts have always exercised undisputed jurisdiction, both civil and criminal, over the said island, and that her right so to do has hitherto always been recognized and acquiesced in by the said State of Indiana.

Further answering, this respondent denies that the other tract of land mentioned in complainant's bill is or ever was any part of section 15, as in said bill alleged, and she also denies that it is or ever has been rightfully within the territorial limits or jurisdiction of said State of Indiana. On the contrary, she avers and charges that the same is merely an accretion to the said Green River Island, lying between said island and the true boundary line between the States of Kentucky and Indiana. Ever since its formation it has been and still is rightfully a part of the territory of the State of Kentucky, and justly within her jurisdiction and control.

Further answering, this respondent says that in the year 1806 the United States, through their legally authorized agents, made a survey of that portion of the lands ceded to them by the Commonwealth of Virginia in 1783, now forming the counties of Warrick and Vanderburgh, in the State of Indiana, which survey, from a point above said Green River Island to a point below the same, extended to and terminated at the true boundary line of Kentucky; that, recognizing and admitting this fact, the State of Indiana, in the year 1875, undertook to ascertain and define the location of said line. To that end the General Assembly of said State, by an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville and making the same evidence and declaring an emergency," approved by the Governor February 27, 1875, directed in express terms that in running said line the commissioners selected and appointed for that purpose should be governed by the surveys originally made by the Government of the United States, and declared
29 that the report of the survey so made, after having been reduced to writing, signed, and acknowledged by the said commissioners and recorded in the offices of the recorders of Vanderburgh and Warrick counties, should "be conclusive evidence in any court of that State of the boundary between the States of Indiana and Kentucky between the points on said Green River Island heretofore indicated;" that thereafter a survey of said line was made, in pursuance of said act, by D. N. Walden and August Pflafflin, who had been duly appointed commissioners for that purpose, and who, in obedience to the directions in said act contained, were governed in running said line by the survey made by the Government of the United States in 1806, above referred to, that being the only and original survey then made by said Government; that said commissioners marked the boundary line between said States between the points aforesaid, made a report in writing of the survey by them so made, signed and acknowledged the same before the clerk of the Vanderburgh circuit court, an officer duly authorized to take the

acknowledgment of deeds, filed copies thereof for record in the recorders' offices of Vanderburgh and Warrick counties, and transmitted the original to the office of the secretary of state of the State of Indiana, all as by said act directed and required, and that said report is by the terms of said act conclusive evidence of the location of said boundary line in all the courts of said State; that the State of Kentucky accepted, and has ever since in good faith acted on, the survey and report made by said commissioners as aforesaid as a final settlement of the location of said boundary between the said States between the points above mentioned, and has by law made and declared said report to be conclusive evidence of the location of said boundary line between said points in all the courts of said State, and that the line as thus ascertained and marked by
30 said commissioners is the original, true boundary line of said State of Kentucky, and embraces both of the tracts of land mentioned in complainant's bill wholly within the limits of the State of Kentucky.

Wherefore the State of Kentucky makes this her answer a cross-bill against the State of Indiana, and prays that the line indicated by the surveys made by the Government of the United States in 1806, as aforesaid, and ascertained, marked, and acknowledged by the State of Indiana under the act aforesaid to be the true boundary line between said States, be held and adjudged to be the true line between the said States; that complainant's bill be dismissed, and for all proper relief.

P. W. HARDIN,
Attorney General of Ky.
J. PROCTOR KNOTT,
Counsel for Ky.

Stipulation.

In the Supreme Court of the United States.

THE STATE OF INDIANA *v.* THE STATE OF KENTUCKY.

It is hereby stipulated—

I. That, the answer of the State of Kentucky and the answer of the State of Indiana to any cross-bill filed herein may be filed without the formality of verification by affidavit or certificate and seal of the State.

II. That, upon the cause being put at issue, depositions may be taken by either party before an officer authorized to take depositions by the laws of the State of Indiana or Kentucky, upon due
31 notice to the adverse party, and if taken before an officer having a seal no other authentication shall be required.

III. That duly authenticated copies of any records, maps, or official documents may be filed by either party with the clerk as evidence in the cause upon furnishing to the adverse party copies thereof, subject to exceptions to the competency as evidence.

IV. That the testimony in the cause shall be closed on or before

the first Monday in October, unless, for cause shown, an extension of time shall be given.

McDONALD & BUTLFR,
Attorneys for Indiana.
J. PROCTOR KNOTT AND
P. W. HARDIN,
Attorneys for Kentucky.

32 (Endorsed:) Sup. Court U. S. 1887, Oct'r term. No. 7, orig'l. The State of Indiana, complainant, *vs.* The State of Kentucky. Answer & cross-bill. Filed Jan. 11, 1888.

And afterwards, to wit, on the 5th day of May, A. D. 1888, the general replication and answer to cross-bill was filed in the words and figures following, viz:

33 In the Supreme Court of the United States. October Term, 1887.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent. } In Equity.

General Replication and Answer to Cross-Bill.

McDonald, Butler & Snow, solicitors for complainant.

34 In the Supreme Court of the United States. October Term, 1887.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent. } In Equity.

General Replication and Answer to Cross-Bill.

The State of Indiana, repliant, saving and reserving unto herself all advantage of exception to the insufficiencies of the answer of the State of Kentucky herein, for replication thereunto says that she will aver and prove her bill of complaint in this cause to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto, without this, that any other matter in said answer contained material or effectual in law to be replied unto, confessed or avoided,
traversed or denied, is true; all of which this repliant is and
35 will be ready to aver and prove as this honorable Court shall direct, and prays as in and by her said bill she has already prayed.

And, further, the said State of Indiana, now and at all times hereafters aving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to any errors, uncertainties, or other imperfections contained in so much of the answer

of the State of Kentucky herein as may be deemed and taken to be a cross-bill herein, and also the right to make further answer thereto hereafter, if the same should become necessary, for answer to said cross-bill of the State of Kentucky says that she denies that the State of Virginia retained full possession, jurisdiction, and control of said strip, tract, or parcel of land, commonly and in the cross-bill called "Green River Island," from the time of the cession of the territory northwest of the Ohio river by the State of Virginia to the United States, in 1783, till the admission of the State of Kentucky into the Union, on the 1st day of June, 1792, and that said tract of land is and always has been, since the admission of said State, within the territorial limits and jurisdiction of the State of Kentucky as they then existed and as they still exist; and she further denies that any claim of said State of Kentucky to said tract of land or jurisdiction or sovereignty thereof has been recognized and acquiesced in by the said State of Indiana.

But, on the contrary, the State of Indiana avers that said strip, tract, or parcel of land commonly and in said cross-bill called "Green River Island" was at the time of the cession of the
36 of the territory northwest of the Ohio river by Virginia to the United States, in 1783, embraced in the territory then ceded, and from 1783 to the time of the admission of the State of Kentucky into the Union, on the 1st day of June, 1792, formed a part of and belonged to the public territory and lands of the United States, and also formed a part of and belonged to the territory over which sovereignty and jurisdiction were granted by the United States to the State of Indiana on the 11th day of December, 1816, when the State of Indiana was admitted into the Union, and ever since has been and now is a part of and belongs to the territory over which the sovereignty and jurisdiction of the State of Indiana extends; that the State of Indiana has endeavored many times to exercise her rights of sovereignty and jurisdiction over said tract of land, in so far as she could peaceably do so, and that the number of residents upon said tract of land has at all times been very small; but as to the actions of the residents upon the said tract of land and the actions of the State of Kentucky respecting said tract of land the State of Indiana has not sufficient information upon which to make averment, and therefore requires strict proof.

And the State of Indiana, further answering to said cross-bill, denies that the other tract of land mentioned in the complainant's bill is an accretion to the said tract or parcel of land commonly and in said cross-bill called "Green River Island," and avers that said tract of land is an accretion to the land on the northerly side of the bayou which, at high water, separates the tract of land com-
37 monly and in the cross-bill called "Green River Island" from the remainder of the territory of the State of Indiana.

And the State of Indiana, further answering to said cross-bill, admits that in 1806 the United States, through its legally authorized agents, made a survey of that portion of the lands ceded to them by the Commonwealth of Virginia in 1783, now forming the counties of Warrick and Vanderburgh, in the State of Indiana, but the

State of Indiana denies that such survey was intended to or did in fact define the boundary line between the States of Indiana and Kentucky, and avers that the line of said survey next the Ohio river was intended and in fact was run for the sole purpose of determining the quantity of lands in the fractional parts of sections for the purpose of sale.

And the State of Indiana, further answering to said cross-bill, denies that she has at any time, in any legal and proper manner, recognized and admitted that said survey from a point above the said tract of land commonly and in said cross-bill called "Green River Island" to a point below the same extended to and terminated at the true boundary line of the State of Kentucky.

And the State of Indiana, further answering to said cross-bill, admits that in the year 1875 the General Assembly of the State of Indiana did pass an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville, and making the same evidence in any dispute and declaring an emergency," which said act was
38 approved by the Governor of Indiana February 27, 1875; and the State of Indiana denies that any report of commissioners was, as required by said act, ever recorded in the recorder's office in the counties of Vanderburgh and Warrick and the original filed in the office of the secretary of the State of Indiana; and the State of Indiana avers that said act and all the proceedings thereunder were and are void and of no effect, and, among other objections thereto, the State of Indiana avers that the act so passed and the proceedings thereunder were and are without the consent of the Congress of the United States, and that said act was repealed in 1877 by the General Assembly of the State of Indiana by an act approved by the Governor of Indiana March 12, 1877, entitled "An act to repeal 'An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville, and making the same evidence in any dispute and declaring an emergency,' and to declare void the survey and other acts of commissioners provided for by said act;" which said act was as follows:

"SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That the said act be, and the same is hereby, repealed, and the survey made by the commissioners appointed as provided for by said act and all proceedings had and acts performed by them are hereby declared to be null and void, and shall not be admissible in evidence in any court of this State as proof of the boundary line between this State and the State of Kentucky.

"SEC. 2. Whereas an emergency exists for the immediate taking effect of this act, therefore the same shall be in force from and after its passage."

39 And the State of Indiana, as a part of her answer to said cross-bill, refers to her original bill herein, and makes every averment thereof a part of this answer the same as if said averments had been set out at length herein.

And the State of Indiana, for further answer to said cross-bill,

says that as to any matter or thing in said cross-bill contained not herein answered unto the same is hereby specifically denied.

Wherefore the State of Indiana prays for relief as in her original bill prayed for; that the respondent's cross-bill be dismissed, and for all other proper relief.

THE STATE OF INDIANA,
By JOSEPH E. McDONALD,
JOHN M. BUTLER,
Her Solicitors.

40 (Endorsed:) Sup. Court U. S. 1887, Oct'r term. No. 7, orig'l. The State of Indiana, complainant, *vs.* The State of Kentucky. General replication and answer to cross-bill. Office Supreme Court U. S. Filed May 5, 1888. James H. McKenney, clerk.

And afterwards, at the October term, 1888, to wit, on the 28th day of January, A. D. 1889, the following entry appears of record, viz:

41 THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 2, Original.

On motion of Mr. Joseph E. McDonald, of counsel for the complainant, leave is hereby granted to amend the bill of complaint herein.

And on the same day, to wit, on the 28th day of January, A. D. 1889, the motion for leave to amend bill of complaint was filed, in the words and figures following, viz:

42 Supreme Court of the United States. October Term, 1888.

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY. } No. 2, Original.

And now comes the complainant, The State of Indiana, by Joseph E. McDonald, her solicitor, and moves the court for leave to amend her bill of complaint herein in order to correct a clerical error therein, to wit: make the first word of the 17th line, on page 4, of the bill as filed read "south" instead of "north."

J. E. McDONALD,
For Complainant.

43 And afterwards, to wit, on the 6th day of February, A. D. 1889, the evidence-in-chief on behalf of complainant was filed, in the words and figures following, viz:

44 *Stenographer's Transcript.*

STATE OF INDIANA, *County of Vanderburgh:*

In the Supreme Court of the United States.

STATE OF INDIANA
vs.
STATE OF KENTUCKY. } No. —.

Complainant's depositions-in-chief, taken at Evansville, Indiana, July and September, 1888.

Appearances: For plaintiff, McDonald, Butler & Snow, Daniel B. Kumler; for defendant, J. Proctor Knott, P. W. Hardin, R. H. Cunningham.

45–46 (Stenographer's index omitted in printing. See general index.)

47 Depositions of Ira A. Fairchild, Humphrey Fickas, George Miller, Sr., David Elkins, Hester A. Holder, Elizabeth Aiken, Francis D. Allen, John James, Matthias Angel, John Miller, Sr., Peter Zapf, Levi Hooker, James D. Saunders, Dr. A. J. Phinney, Azariah T. Whittlesey, and John M. Coulter, witnesses produced and sworn *to* before me, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, at Evansville, in the county of Vanderburg, State of Indiana, at the office of the clerk of the United States circuit court, in said city of Evansville, county of Vanderburg and State of Indiana, on the 9th, 10th, and 11th days of July, A. D., 1888, pursuant to the annexed notice and stipulations.

These depositions were taken on the part of the complainant in a certain action now pending in the Supreme Court of The United States, wherein The State of Indiana is complainant and The State of Kentucky is respondent.

48 In the Supreme Court of the United States.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY. }

The respondent in the above-entitled cause is hereby notified that on the 25th day of June, 1888, at the office of the clerk of the United States circuit court, in the city of Evansville, in the county of Vanderburgh and State of Indiana, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, before an officer authorized to take depositions by the laws of the State of Indiana, the com-

plainant will proceed to take depositions of witnesses, to be used in evidence on the trial and hearing of said cause, and will, if necessary, continue said taking from day to day, between the aforesaid hours or pursuant to adjournment, until said depositions are completed.

Dated this 28th day of May, 1888.

McDONALD, BUTLER & SNOW,
DANIEL B. KUMLER,
Attorneys and Counsel for Complainant.

We acknowledge service of the above notice this day of June 6th, 1888.

P. W. HARDIN,
Att'y Gen'l of Ky.
J. PROCTOR KNOTT,
Att'y for Ky.

49 In the Supreme Court of the United States.

THE STATE OF INDIANA *vs.* THE STATE OF KENTUCKY.

It is hereby stipulated that the time — taking depositions on the part of the plaintiff, which, according to notice heretofore served, was to commence on the 25th day of June, 1888, at Evansville, Indiana, be extended to the 9th day of July, 1888, to be taken at the same place as in said notice prescribed. It is further stipulated that the defendant may take depositions, without previous notice, at the same place or at such place in Kentucky as the parties may agree, such depositions to be taken contemporaneously with the depositions taken by the plaintiff or immediately upon the closing of the plaintiff's depositions.

McDONALD, BUTLER & SNOW,
Attorneys for Plaintiff.
J. PROCTOR KNOTT,
Attorney for Defendant.

Dated this 14th day of June, A. D. 1888.

50 In the Supreme Court of the United States.

STATE OF INDIANA *vs.* STATE OF KENTUCKY.

It is stipulated and agreed between the parties hereto that the signatures of witnesses to the depositions taken by either party are waived.

It is further stipulated and agreed that all testimony introduced by either party shall be subject to exceptions, to be raised either on motion or at final hearing, in the same manner as if the testimony had been specifically objected to at the time when the depositions were taken.

It is further stipulated and agreed that the complainant herein may take further testimony without notice, beginning the day which

shall be named in the respondent's notice for taking testimony and continuing therefrom from day to day or pursuant to adjournment, and that the respondent may in such case take its testimony after such further testimony of the complainant is finished with the same effect as if the respondent's testimony had been begun on the date named in the respondent's notice.

McDONALD, BUTLER & SNOW,
Attorneys for the Comp't.
J. PROCTOR KNOTT,
Att'y for Resp't.

Dated Evansville, Ind., July 9th, 1888.

51 The said IRA A. FAIRCHILD, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. State your name.
A. Ira A. Fairchild.
2 Q. Your residence.
A. In the city here.
3 Q. How long have you lived in Evansville?
A. I have been raised in the county; it has been my home since 1818, either in the city or close by.
4 Q. What is your age?
A. I was born in 1815, January 14th.
5 Q. What is your present occupation?
A. My present occupation has been with the city surveyor; assistant of the city surveyor and county surveyor.
6 Q. And for how long has that been your occupation?
A. I have been off and on—I don't know the number of years—I have been helping, more or less, the county surveyor since the time old John Evans was county surveyor.
7 Q. How long have you been a surveyor?
A. I have been with them, helping them off and on, ever
52 since I was grown—before I was grown—but the last seven or eight years I have been working with Mr. Saunders—for the last seven or eight years.
8 Q. Mr. Saunders is the county surveyor?
A. He was.
9 Q. Are you acquainted with the country in the vicinity of Evansville, and particularly the country in the neighborhood of Green River Island, so called?
A. Yes, sir; I have been.
10 Q. You may state the circumstances, if any, in regard to your knowledge of Green River Island, showing your knowledge of Green River Island.
A. Well, I have been acquainted with Green River Island—I don't know—I should think over sixty years. When I was a boy,

before I was grown, my father and uncle, old man Vertrice, and several others, we used to get together out here—we lived then in Stringtown, my father did—and we used to drive our cattle up and then watch the creek as it would come up, and when the creek got to a certain height on the dam, then it was time to go get our cattle out before they would have to swim.

11 Q. What was your age when you first came to be familiar with the country around Green River Island?

A. I suppose I must have been perhaps twenty-two, or
53 maybe a little older, but not much. I used to be frequently there before I was grown; would go up there to Mr. Garrett's hickory-nutting and pond-hunting in the fall.

12 Q. In your position as assistant to the city surveyor and county surveyor have you ever had any occasion to make an examination of the land near Green River Island?

A. In what particular?

13 Q. In any way; in the way of surveying or otherwise.

A. In surveying and running off lines, running off the land for men, of course I have to do a good deal of it.

14 Q. What was the condition of water in the bayou on the Indiana side of Green River Island, so called, at the time of your earliest recollection?

A. At the time of my earliest recollection, when the river was down, why, I could walk across in a number of places without getting into the water.

15 Q. How long during the year would the channel of the bayou be in that condition?

A. It would be a good deal owing to the season, if the river kept down. If it came up like it did in 1865, why, then there was water in it in August, in 1865, so that you could not go over without ferrying; but very seldom do we ever have a time from the time the river goes down in the spring. Sometimes in June—
54 sometimes we have had a little rise then, and the water would, perhaps, get high enough to run through the chute.

16 Q. You said August, 1865. Do you mean August, 1865?

A. 1875. I got it August, 1865; I mean August, 1875.

17 Q. Generally speaking, state what the condition of the bayou channel was during the summer and during times of low water.

A. In an early day the large timber that grew along there—it used to be big heavy drift in there; and after that then they turned several of them so that they could fetch a boat from this way, so as to go up and get their corn; they dropped the big timber so that they could let the drift out, so that they could get there with their boat.

18 Q. The question is this: I asked you what was the condition of the bayou channel, generally speaking, during the summer and at times of low water, at the time of your earliest recollection.

A. It was dry in places. Of course, there was some deep holes along too. We generally had our regular crossing.

19 Q. Where did the water that was in the holes in the bayou channel come from—from the river, or was it drainings of surface water from surrounding land?

A. We would suppose from the holes being kind of muddy in the bottom it stayed there until it got away or until the river
55 came up again. There was several holes there. There was one hole I used to go fishing in that was six or seven feet deep when the river was clear down.

20 Q. Was the water in these holes surface water or was it the water of the river?

A. It was pond water.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

21 Q. Mr. Fairchild, when did you adopt the avocation of surveyor?

A. I have been at it more or less from before I was of age. I used to go out with the surveyors before I was of age—a good while.

22 Q. In what capacity have you been acting?

A. Assistant—chain-carrier, axeman, and flagman.

23 Q. And that has been your occupation from the time you were a young man until the present?

A. Oh, no, no, no, sir; for the last eight years I followed that pretty much altogether; sometimes been out on railroads.

24 Q. You spoke of large drifts accumulating in this slough or bayou?

A. I did.

25 Q. Generally, in crossing from the Indiana shore to the island you walked on those drifts, didn't you?

A. Sometimes, when we didn't want to go up the road, where
56 we could get across handiest, we would cross on them, of course.

26 Q. You spoke of certain holes along that slough being six or seven feet deep; you were asked where the water came from in those sloughs; what is your answer to that?

A. My answer is that when the river came up and filled them holes the water stayed there until it either evaporated or——

27 Q. Or the river raised again?

A. Or the river raised again.

28 Q. Have you observed that slough has filled up much during your recollection?

A. Yes, sir; it has filled up some.

29 Q. To what extent?

A. Why, I cannot tell you.

30 Q. What part of the slough has filled up most?

A. The upper end of the slough has filled up the most.

31 Q. Have you observed in your recollection that the curve of the main river has left the Indiana shore and been encroaching upon the Kentucky shore all the time?

A. Yes, sir; I have; it has.

32 Q. How far has it receded towards the Kentucky shore, in your recollection?

57 A. Well—you speak of right at the head of the island and along there?

33 Q. Yes; all the way along.

A. Well, it has not receded a great deal right along from just above the head of the island down as much as it has lower down; there used to be, fifty years ago or sixty, there used to be a tolerably rough bank there right below the head that went down pretty rough and then sloped off at the bar. Now that has got so that it is pretty near a regular slope out; it has filled up some there right below the head.

34 Q. Has it not filled up all the way along the southern border of the island?

A. Yes, sir; the southern border of the island is filled up until you get down pretty well—well, I should think to the middle of the island; from that down it seems to have about kept its own.

35 Q. Now, has not the slough itself changed and shifted towards the Kentucky shore?

A. No, sir.

36 Q. It has not changed any?

A. No, sir; because there is some of the old trees still standing there that stood on each bank here four or five feet over, some of them 120 feet perhaps apart, and them trees still stand there and show where the main channel has always been since this has been a State.

58 37 Q. Do I understand you to say that the land had made more rapidly at the head of the island than lower down?

A. Filled up higher there than lower down; that is my judgment.

38 Q. What is the average depth of that slough from the top of the bank to the surface of the water, in your earliest recollection?

A. Well, I cannot tell you now. It was never a deep slough only in those holes. There was high places when the river would get down; the river comes in at this end and goes up.

39 Q. Which do you call this end when you say "this end;" you mean the end nearest Evansville?

A. Of course, I mean the end down here; the lower end.

40 Q. I do not know that you apprehend my question as to the average depth of that slough from the surface of the bank—the top of the bank to the surface of the water. I did not mean to the bottom, to the mud in the bottom of the slough, but the average depth.

A. I cannot tell you. If I had a map here that old man Saunders made there when we were going to level up —. It was in 1865 or 1866, I believe, we run the level up through there and took the height of the banks on each side to the bottom of the slough, but I cannot recollect.

59 41 Q. What is the character of the ground back of this slough, in Indiana? Is it hilly or flat land?

A. Well, it runs in kind of waves. There is an old slough that used to be down through there from time immemorial, I reckon.

42 Q. Now, is it not true that every year, at what is known as

ordinary stage of water, that water runs through that slough in a current?

A. I never knew it at an ordinary stage.

Re-examination.

Questions by A. H. SNOW, Esq.:

43 Q. At the time of your earliest recollection, to what height above low-water mark was the head of the bayou channel filled up?

Mr. CUNNINGHAM: He has not said it was filled up at all above low-water mark yet.

Mr. SNOW: He says it was filled up; that could only mean above low-water mark.

The WITNESS: It is only filled up now about thirty-one feet above—a little more than that; about thirty-one feet now above the level of the water here.

44 Q. The question I asked you was how much was it filled up when you first knew it?

A. It was not filled up so much. It was filled up, I should think—I don't know, but I should think it would be from ten
60 to twelve feet from low water for to run through there.

45 Q. When you first knew it?

A. When I first remember it, because I know we had a certain mark at the mill-dam so as to know when to go after our cattle, so that we could get over on the island to drive them off when we used to drive through from the canebrake.

46 Q. At the time you speak of as the time of your earliest recollection were you frequently about the island?

A. I used to be there every year two or three times, and sometimes more, and then there may have been a little spell that I was not there, perhaps.

47 Q. What do you mean by the expression "drifts" in the bayou channel; do you mean drift-wood?

A. I mean drift-wood, of course, in high water would come in there and choke up the bottom so that they could not get up with their flat-boats to get their corn down when the river was up.

48 Q. How extensive were these accumulations of drift-wood?

A. Well, I cannot tell you; some pretty big piles sometimes they would come in.

49 Q. Did accumulations of drift-wood ever extend beyond this bayou—beyond the banks of the bayou?

A. Yes, sir.

50 Q. How far?

61 A. It depends on the way the current happened to go or the wind blow—kind of scatter it out, and then land along upon each side, where the shallow water was; the trees would catch and hold it there.

51 Q. Would such accumulations extend over the bottom lands on this side as well as in the bayou channel?

A. Yes, sir.

52 Q. And for how many miles back of the river might such accumulations of drift-wood have been found at that time?

A. We can find it now clear back to the hills.

53 Q. Well, at that time?

A. Well, we can find it now and clear back to that time, clear back from the bayou to the hills—a mile and a half or two miles—to the bayou. The way the drift was got out of that, a good deal of it, Cory Garret cut down the trees so as to let the drift out, so as to get to his corn, and burned the drift up somewhere there.

54 Q. Was or was it not possible, at the time of your earliest recollection, to cross the channel of this bayou, at times of low water, on the land, on the ground—not on the drift-wood, but on the ground?

A. Oh, why, most assuredly; yes, sir.

55 Q. At how many points, in how long a distance, was it possible to cross the bayou on the ground at low water at the time of your earliest recollection?

62 A. I recollect of crossing at three or four different crossings.

56 Q. Has the river, within your recollection, receded towards Kentucky at the head of the island to any extent?

A. It has some, I suppose.

57 Q. To what extent?

A. It is filled up where that bluff bank was down, below the head of the island; that used to go down a pretty bluff bank; now it has peeled off so that it comes off at a regular slope.

58 Q. By comparison with the Kentucky bank at the lower end of the island, how has the water receded at the head of the island? Has the water receded more towards Kentucky at the lower end of the island than the upper end?

A. No; I think that is pretty near about as it has been for a good many years.

59 Q. At the head of the island it is pretty near the same?

A. Yes, sir; only it is filled up more at the head of the island; having little more wash it has filled up—not on top of the bank—below, where the chute is.

60 Q. That is not my question; my question is whether the water has receded towards Kentucky more?

63 A. It is filled up there and the water, of course, has gone more towards Kentucky?

61 Q. Has the channel of this bayou, within your recollection, materially changed?

A. Not that I have ever noticed; no; perhaps there might be one or two places along down that has changed a little, but the big part of the channel is about the same as it has been ever since I can remember.

And further deponent saith not.

(Signature waived by agreement.)

The said HUMPHREY FICKAS, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions — A. H. SNOW, Esq.:

1 Q. State your name and residence.

A. My name is Humphrey Fickas, and I am living here in the city now, and have been living here—I have only been here a little over three months.

2 Q. Where did you live previously?

A. I lived up in the bottom, about three miles and a half or two miles from the bayou.

3 Q. In which direction from the bayou?

64 A. My land lays right north of it; I live a little northeast.

4 Q. You may state your age.

A. I am sixty-eight years old last March.

5 Q. Where were you born?

A. Born in that township and county.

6 Q. Were you born on this land that you were speaking of a moment ago?

A. No, sir.

7 Q. When did you move to that?

A. About forty-seven years ago.

8 Q. Prior to that how far from Green River Island, so called, did you live?

A. About four miles and a half.

9 Q. And you were born at this point, four miles and a half from Green River Island?

A. Yes, sir; born and raised there.

10 Q. And what has been your occupation?

A. Farming.

11 Q. Have you or have you not been familiar with the land near Green River Island?

A. Yes, sir.

12 Q. In what way?

A. Oh, I knowed the land and I knowed the bayou; been there many a time—hundreds of times.

13 Q. How far back can you recollect in regard to Green River Island and the surrounding country?

A. Oh, more than fifty years.

14 Q. What was the condition of the bayou channel near Green River Island at the time of your earliest recollection?

65 A. Well, in low water it would go dry.

15 Q. Has the bayou channel materially changed during your recollection?

A. Not much; I don't think it has, any more than it has filled up some, of course.

16 Q. For how long a period during the year, generally speaking, would the bayou channel generally go dry?

A. It would go dry pretty early in the spring, and stay dry until the fall and wet weather came again.

17 Q. Where was your father born, and where did he live during his life?

A. He lived about four miles and a half from there, on the Newburg road.

18 Q. Do you mean that he lived there all his life?

A. All my living he was there; he didn't live there all his life.

19 Q. When did he move to that place?

A. That was before I was born, and I cannot tell you when he moved there.

20 Q. Have you ever heard your father say anything with relation to the bayou channel near Green River Island; and, if so, what have you heard him say?

A. I have heard him say that it would go dry in low water.

21 Q. How old was your father when you were born?

A. I don't know exactly how old he was.

66 22 Q. As near as possible?

A. Perhaps thirty.

23 Q. Is your father now living?

A. No, sir.

24 Q. At what time in your father's life did he make this remark regarding Green River Island?

A. I have heard him speak about it frequently.

25 Q. At what age were you at the time you heard your father speak of this?

A. About twenty-one; I have heard him talk about it more than that, and before I was that old, too.

26 Q. Of what period of time was your father speaking when he said that channel went dry in the summer?

A. It would be dry pretty near all summer.

27 Q. No; that is not the point. I want to know whether your father was speaking of the time of the conversation, or whether he went back to the time of his earliest recollection, or to what time?

A. Well, I cannot tell you whether he went back to his earliest recollection or not, only I heard him speaking about it before I was near grown. He used to be a flat-boat pilot.

28 Q. Repeat what he said.

A. He said it would go dry in dry weather; in the summer time, when the river was low, it would go dry.

29 Q. What was your father's occupation?

67 A. Farming; and he was a flat-boatman, too.

30 Q. What were the circumstances under which this conversation took place or this remark of your father?

A. I don't remember particularly.

31 Q. Where were you and your father at the time your father made this remark?

A. I have heard him make the remark at home, and I have heard him when we were at the river there loading a flat-boat with corn.

32 Q. How far back did your father say that that condition of the bayou, its being dry in the summer, had continued?

A. Well, I cannot tell you just how far back; it was as long ago as I can remember.

33 Q. The question was how far back did your father say?

A. I never heard him say how far back he noticed it to be dry.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

34 Q. I understand you to say that this bayou had filled up?

A. Yes; it has filled some.

35 Q. To what extent has it filled?

A. I cannot tell you.

36 Q. What is your best impression?

68 A. I expect it has filled up eight or ten feet about the head; below, I don't know.

37 Q. It has filled up more at the head than it has anywhere below?

A. I think it has.

38 Q. When you speak of that bayou going dry in the summer do you mean dry from one end to the other or only in particular places?

A. Oh, yes; there was holes that had water in them.

39 Q. You were twenty-one years of age when you heard your father speaking of this?

A. I heard it before I was that old.

40 Q. How old were you when you first heard him speak of it?

A. I may have been twelve or fourteen; somewhere along there.

41 Q. To whom was he speaking when he made this remark?

A. He was talking at home amongst us. I have heard him talk that at home and heard him talk it on the flat-boat.

42 Q. Who else was present except yourself?

A. My brothers.

43 Q. What lead to the conversation?

A. He was a flat-boatman; he boated along that slough in the winter time.

44 Q. Do you remember where these conversations took place?

A. At home; and I have heard it when he was on the flat-boat, too.

69 45 Q. You heard him at home and on the flat-boat?

A. Yes, sir.

46 Q. Do you know how he came to make that remark?

A. No; I don't know why he came to do it. I cannot tell you that.

47 Q. He just remarked that the slough would go dry?

A. He would be talking about it and he would say it would go dry.

48 Q. Telling you that?

A. Yes, sir.

49 Q. Didn't you know it would go dry?

A. Yes, sir; I knowed it. I would hear him say it would go dry before I knew it.

50 Q. You say it would be dry from the spring until fall?

A. Yes, sir; in dry times it would, when the river would get low.

51 Q. Is it not true that within the last twenty years there has been a running stream through that slough, between spring and fall?

A. Yes, sir; in high water there was.

52 Q. Within the last thirty years has not the water been running through there at an ordinary stage?

A. No, sir.

53 Q. You think not?

A. No, sir.

70 54 Q. Have you not noticed boats to go through within that time—steamboats?

A. I have, when the water was right high; I have not seen one go through, but I have heard of them going through when the water was right high—when it was high enough to go over the corn-fields every place; they could go over the corn-fields as well as there.

55 Q. You never heard of a steamboat passing along there when the water was within its banks?

A. No sir.

56 Q. How much lower was the bed of the slough than the top of the banks?

A. I cannot tell you how much that was; I have no idea how much lower it is.

57 Q. Do you remember anything else that your father said when he spoke about the slough being dry?

A. No, sir.

58 Q. That is all you can remember about it?

A. Yes, sir; I don't remember anything that he was talking about.

59 Q. That is all he said about the slough—that it would go dry in low water?

A. Yes, sir.

60 Q. He said nothing about its condition at any other stage of the water?

A. No, sir.

71 61 Q. When was the last of those conversations; when was the last time you heard him speak of that?

A. I cannot say that.

62 Q. How long has he been dead?

A. I cannot tell you that either; I believe he died in 1862 or 1863.

And further deponent saith not.

(Signature waived by agreement.)

The said GEORGE MILLER, Sr., being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name and present residence.
A. George Miller, Sr. I live here.
2 Q. Where were you born?
A. I was born in Burav, Germany.
3 Q. When did you move to America?
A. In 1838.
4 Q. Where did you live after you moved to America?
A. I lived for some four or five years in that township, within a mile of Mr. Fickas.
72 5 Q. Where did you live after that?
A. I lived most of the time from 1848 up to this time I lived here in the city.
6 Q. What is your age?
A. I am sixty-nine years old.
7 Q. Have you or have you not owned land in this township in the neighborhood of Green River Island?
A. I have, sir; I do not now.
8 Q. You may state the location of that land and at what time you owned it.
A. I think, if my recollection serves me right, I think I bought it at commissioner's sale in 1863, and I sold it perhaps—I will not be positive about that—in 1874, if I am not mistaken; I will not miss it more than a year if I say 1874; I will not be positive; about that, though, within a year or so.
9 Q. You may state the location of this land with respect to Green River Island.
A. It run right agin the bayou—that is, the west line.
10 Q. Did you personally farm this land during the time you owned it?
A. I did, with the exception of two or three years I had it rented out.
11 Q. At what time did you first become familiar with the condition of the Green River bayou?
73 A. Well, that was about in 1839, the year after I came here. You see I came here in the latter part of the summer like and stopped in this city for a month or so, and then I moved out in that township—that is, my father did; I was young when he came here.
12 Q. What was the condition of Green River Island bayou at the time of your earliest recollection?
A. Well, the bayou at that time was considerably deeper than it is now; it has filled up some.
13 Q. Was the bayou or was it not dry during times of low water and during the summer, generally speaking?

A. After the water went down it generally went dry—that is, in some places; some places at that time, unless we had a remarkably dry summer, it would not go dry in some places; it would be miry too—that is, only in places.

14 Q. Could you or could you not, at the time of your earliest recollection, pass from the main-land to the island, on ground, at the time of low water?

A. Oh, yes, sir.

15 Q. And at how many places, should you judge?

A. Well, four or five different places, to the best of my knowledge. I know I crossed one time on horseback. The water had just got down and I liked to got mired; but there was no water; it was not miry, but it was full sandy.

74 16 Q. For how long a time during the year would the water in the bayou channel, as a general rule, remain in this condition?

A. After the river went down?

17 Q. Yes, sir; remain in the condition so that you could cross it on the ground.

A. If I understand you——

18 Q. Let me repeat the question. For how long a time during the year—how many months during the year—would the bayou channel remain in such condition that you could cross it at five or six places, as a general rule?

A. As long as the river kept down; as long as the river didn't come up.

19 Q. For how many months, as a general rule?

A. Well, for five or six or seven or eight months, sometimes; it just depended on the river. Sometimes, if the river kept down in the bed, you could cross it.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

20 Q. How much has that bayou filled up, in your recollection?

A. I suppose it filled up from—well, I cannot say exactly, but I guess it filled up from two to five feet, — say nothing about the head. I have not been at the head for the last two years, and I cannot say how it looks now, although the last time I was there it looked like it had filled up more above than it did down here. I

75 would suppose from two to five feet—that is, on an average. I would suppose that some places it is filled up more than others.

And further deponent saith not.
(Signature waived by agreement.)

The said DAVID ELKINS, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name and present residence.

A. David Elkins; Evansville.

2 Q. What is your age?

A. Sixty-four.

3 Q. Where did you live before you came to live in Evansville?

A. Posey county. Before I came to live in Evansville I lived in the river bottom, where I was born.

4 Q. How near or at what place in the bottoms were you born?

A. I was not born in the bottoms; I was born in Posey county.

5 Q. Then at what time did you move to the bottoms, or what do you mean by the bottom?

A. The river bottom up here above town.

76 6 Q. At what time did you move into the bottoms above town?

A. I went there, I think, about 1842, according to my recollection.

7 Q. How near did you live in the bottoms to Green River Island?

A. I lived just on this side of the bayou two years after I moved up there, and then the balance of the time I lived on the island, up to 1865.

8 Q. What was your occupation during the time you lived on or near Green River Island?

A. Farming; raising corn, principally.

9 Q. What, at the time of your earliest recollection, was the condition of Green River Island channel?

A. Of the bayou?

10 Q. Green River Island bayou channel; yes, sir.

A. Well, it was a bayou full of water pretty near the year round; two-thirds of the year.

11 Q. What was the condition of the bayou during the balance of the year, the other one-third of the year?

A. Well, it would be dry in places—that is, towards the head of the island, what we call the head. It began to get dry there through the summer season.

12 Q. What do you mean by dry?

A. Well, the water would quit running, quit coming in. It would get dry naturally. We could cross it in places.

77 13 Q. At how many places would you cross the channel during times of low water?

A. I cannot recollect but three on the bayou in my first recollection; the first years I lived right on this side of the bayou.

14 Q. By crossings do you mean crossings for wagons?

A. Yes, sir; so that you could cross it with a wagon or team.

15 Q. Were there other places where you could cross on the ground on foot?

A. No. I don't think in the two years there was. You might have crossed on drifts, but you could not have crossed on the ground.

16 Q. What was the nature of the growth—vegetation—in the bayou at the time you first knew the bayou?

A. Well, it growed up in cotton-woods and willows.

17 Q. Was the growth a scattered, sparse growth or dense growth?

A. A dense growth, small growth. There was some small trees.

18 Q. How dense was the growth?

A. Oh, there was some there, I expect, from two to three feet through.

19 Q. How dense was the growth—how thick were the willows and brush there?

78 A. The willows and what we call iron-wood was along on the second, what we call the second, bank, and was so thick you could not get through it at all. The iron-wood you could not crawl through it.

20 Q. Is that growth there at present or has it been cut off?

A. Oh, no; it has gone long ago.

21 Q. At what time was the growth in the channel cut out?

A. Well, I think right along the channel was cut out about the year 1850, but then on the second bank it was not.

22 Q. Between the time when you first became acquainted with the bayou channel and the year 1850 did you ever notice any perceptible filling of the channel?

A. No; I don't think I did. I did not notice any filling up—that is, on the lower part of it. I don't recollect when the filling commenced first, but I know it commenced at the head; there is where I noticed it first.

23 Q. Was the filling at the head during the years from the time when you first knew the channel until 1850, at the head of the channel, extensive or not?

A. No; I cannot tell much about that, because there was a terrible drift right in the head of the bayou, and I cannot tell whether it filled or not.

24 Q. When did you first become familiar with the bayou channel—in what year?

79 A. Well, I worked up there for my brother-in-law in 1838; that was the first I knew of it; I crossed it then.

25 Q. And between the years 1838 and 1850 I understand you to say that there was no material change in the bayou channel?

A. No; there was not.

26 Q. After that time was there more or less filling than there was between the years 1838 and 1850?

A. Yes; it filled then after that time. I think, if I mistake not, about 1850 is when Cory Garrett bought a warrant from a man by the name of Sugg and cleaned it out; he cut it out, cut out all these leaning trees that leaned over into the bayou and let all these drifts out; there was several drifts formed in the water.

27 Q. At times of low water was there any flow of water into this bayou from the banks, and what was the nature of that flow?

A. Well, from—you might say from May—generally the water would go down, but whenever it did go down there would be bank springs, maybe twenty or thirty along the bank, that would burst out and flow water and run water until after the river would get down so low that the river would not run through the bayou at all; these would keep the bayou running for a month or two.

28 Q. You mean the bank springs would keep the bayou

80 running for a month or two after the water in the river ceased to overflow into the bayou?

A. Yes, sir; a little stream.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.,

29 Q. I understand you to say that when you first became acquainted with that island there was a large drift in the upper end of the bayou?

A. Yes, sir.

30 Q. How extensive was that drift—how long was it?

A. Oh, I expect it was nearly fifty or seventy-five yards across it. On this side it was a kind of flat bank; on the Indiana side it ran up on that sand bank there, and then there was trees standing right in the mouth.

31 Q. That is, on the island?

A. On the island, yes.

32 Q. There were trees on the island, and then opposite there was a low sand bank on the Indiana side?

A. On this side; yes, sir; and some on yon side. There was cotton-wood trees stood right in what we call the mouth of the bayou.

33 Q. And that drift was some seventy-five yards long, you say?

A. Yes; I cannot say how long it was. I know it was an awful big drift.

81 34 Q. How long did it remain there?

A. Well, it remained there a good while, because the man that owned the head of the island there would not have it disturbed; did not want it disturbed.

35 Q. Who owned the head of the island?

A. Mr. Yates.

36 Q. And you stated that, owing to that drift, you could not tell whether the channel at that portion had filled up or not?

A. No; I cannot tell whether it filled very much or not.

37 Q. During the time that you observed it?

A. Yes.

38 Q. What Mr. Yates was it that owned the head of the island?

A. George W. Yates.

39 Q. What year did you move onto the island?

A. I moved onto the island right after the 1847 freshet.

40 Q. How long did you live there?

A. I lived there on the island then until 1865.

41 Q. How old were you when you moved onto the island?

A. I guess I was twenty-three, or somewhere along there. I don't know exactly. I could tell by counting up, exactly.

42 Q. Where were you assessed for taxation, and where did you vote during your residence on that island?

A. Henderson, Kentucky.

82 43 Q. Were you ever assessed for taxation on your property there in this county, in Indiana?

A. No, sir.

44 Q. From whom did you say Garrett bought the warrant?
A. From a man by the name of Sugg that came from Kentucky. I also learned he came from Henderson.
45 Q. By whom was the warrant issued; by what authority?
A. I cannot tell you who it was.
46 Q. Do you remember what year it was that the warrant was laid on that piece of ground?
A. That the warrant was laid?
47 Q. Yes, sir.
A. No, sir; it was in about when it was laid.
48 Q. It was after you had moved to the island, was it, or before?
A. That he bought it, yes; that Garrett bought the island.
49 Q. I mean was that before or after you moved on the island?
A. It was after I moved on the island.
50 Q. You don't remember what year?
A. I think it was 1850, or somewheres about that time.

83 Re-examination.

Questions by A. H. SNOW, Esq.:

51 Q. Did this drift that you speak of, which was formed at the head of the bayou channel, form after you moved into that region, or was it there at the time you first went there and became familiar with the island?
A. You see there were two shutes there; there were two shutes at the head of the island, which made Buck Island, made a little island there they called Buck Island; and this drift, my recollection is, when it came down, formed in the head and came down from the Indiana side of the bayou.
52 Q. It principally formed, then, after you moved there?
A. I think there was some there when I moved there. If my recollection serves me right, I think there was some drift there.
53 Q. But the greater part was added after you moved there?
A. Yes, sir; the people up there didn't—they wanted the drift there.

Recross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

54 Q. One question I forgot to ask. You spoke of a second bank, Mr. Elkins; I wish you would explain that so that we can understand what you mean by it.
84 A. The first bank, what we call the first bank, is the bank right along the road, where the road is—I could explain it—it is on both sides, though, the same way, on the Kentucky side and on the Indiana side, and then there is a level and there is a bench down before it gets to the bayou. Some places this second bank or bench was a heap wider than others. Some places it was wider on this side of a bayou, and some places it was wider on the other side of the bayou, just as the bayou crooks, you know.
55 Q. Now, about how wide would those second banks average?

A. Oh, it was wide in places and not very narrow in places; some places it would be twenty feet wide or twenty yards wide; some not more than twenty feet.

56 Q. How much lower were these second banks than what you would call the first banks?

A. How much lower was it then or now?

57 Q. Then.

A. From ten—I should say from ten to twelve feet in places; there would be a little difference.

58 Q. Those second banks extend the full length of the bayou or chute?

A. They are all along up the bayou.

Questions by Mr. KUMLER:

59 Q. When you say the second bank, do I understand you to mean the bank of the bayou channel proper?

A. Yes, sir; it runs from the first bank, the banks of
85 bayou—the channel bayou.

60 Q. Are those the banks that I understand you to say, in answer to the question of Governor Knott, that at some places are only twenty feet apart and at others are wider?

A. At some places they come into the first bank. The channel bayou would come, maybe, within twenty feet or thirty feet of the first bank on one side, but then it would be wider on the other. From bank to bank, clear along up by the bayou bank—from bank to bank has always been pretty near the same distance.

And further deponent saith not.
(Signature waived by agreement.)

Whereupon the further taking of these depositions was adjourned until to-morrow, Tuesday, July 10th, 1888, at nine o'clock and thirty minutes a. m.

86 TUESDAY, *July* 10th, 1888—9.30 a. m.

The parties met pursuant to adjournment.

Present: The same as on yesterday.

The taking of depositions was resumed as follows:

The said HESTER A. HOLDER, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. Hester Ann Holder.

2 Q. Where do you reside at present?

A. At my son's house, this side of Newburg, on a farm.

3 Q. How long have you resided there?

A. Ever since March.

4 Q. Where did you reside prior to that?

A. In Newburg; I owned property in Newburg; I was living in Newburg and I got sick and my son would have me to come to his house.

5 Q. How long did you live in Newburg before you came to live at your present residence?

A. Four years.

87 6 Q. Where did you live before?

A. I lived right close to where my son lives now, on our farm; I lived there forty years.

7 Q. Where did you live before you went to live on the farm?

A. Well, I lived on a rented farm part of the time, and part of the time I lived right on the bank of this Three-Mile Island bayou.

8 Q. What do you mean by Three-Mile Island?

A. This side of the bayou you know there is an island there they call Three-Mile Island. We lived part of the time on the bank of that, and then we bought a farm in Warrick, and we resided there for over forty years. My husband died and I broke up there and sold out.

9 Q. Where were you born?

A. In Indiana; raised in Vanderburg county.

10 Q. In what part of Vanderburg county were you born?

A. I was raised close to that Three-Mile Island, this side of Newburg.

11 Q. What is your age?

A. I am in my 77th year. I will be 77 next March.

12 Q. Are you familiar with the Green River Island, so called?

A. The upper part of it; I have been across and around it

88 a good deal, but down towards the city I was not so well acquainted with it.

13 Q. How many years have you been acquainted with the Green River Island bayou?

A. I cannot tell you just how many, but it has been over sixty.

14 Q. What was the condition of the Green River Island bayou in times of low water, during the summer, at the time of your earliest recollection?

A. Well, it went dry in low water; I could cross it dry-footed, and I think it had standing water in places along it—I think it did—pools of water standing along there.

15 Q. This was the state of things as far back as you can remember, was it?

A. Yes, sir; I have crossed it a great many times; rode across it and walked across it dry-footed.

16 Q. Are you acquainted with the tract of land called Buck Island?

A. I am not; I am not acquainted with that name.

17 Q. Has there ever been, within your recollection, at the head of Green River Island, towards Indiana, an island separate from Green River Island?

A. Never, in my recollection; it has been a good many years since I saw the head of it, but I don't recollect of any island—only just the straight channel.

18 Q. During how long a time in the year would the bayou
89 this side of Green River Island remain dry or in the condition of pools?

A. I cannot say just how long, but when the water got low in the Ohio, why the bayou went down.

19 Q. Well, about what proportion of the year would it stay in that condition?

A. Just owing to the river; if it staid up high, why it sailed through there, and if it got down a little bit, to low-water mark, it was dry.

20 Q. How long during the year did you ever know of that bayou remaining in that low condition—dry condition?

A. No; I cannot recollect just how long it would remain that way, but it was just owing to the stage in the river—the water in the river—owing to how, if the water stood up in the river, it might come into that bayou, and if it went down pretty low the bayou went dry.

21 Q. Was this the condition of things at the time of your earliest recollection?

A. Yes; the time that I first got acquainted with it; when I was first large enough to go to my sister's. My sister lived on the bank of it—right on the bank of it, down a piece, betwixt the head of the island and the foot of it—and from the time I got large enough to go there I was acquainted with it.

22 Q. What was the name of your sister?

90 A. Mrs. Garrett, old Johnny Garrett's wife.

23 Q. Where did your sister live?

A. She used to live on the island, too. They moved on this side, right on the bank of the slough, of that slough. I don't know how far down it was.

24 Q. When did she live on the island?

A. She lived on the island after she became a widow.

25 Q. About what year was that; about how many years ago was it?

A. That has been thirty years ago.

26 Q. Where did your sister live when you first knew the bayou?

A. The old man used to live—old man Garrett used to live—on the island, on the big river side; then he moved across the island, moved across on this side of the bayou, and lived on this side of the bayou, and after she got to be a widow she moved across onto the Kentucky side, as they call it, across the bayou, and she died there.

27 Q. Did you make frequent visits to your sister while she was living on the island?

A. Oh, yes; I was a young girl then, and I frequently went there and staid, and they had girls, and we were frequently there; I was frequently at her house.

28 Q. Did you make these visits at different seasons of the
91 year?

A. No, I didn't hardly ever go there in the cold part of the year. It was in the summer time when I went there, and then some-

times they would say that the water was running through the slough, and then I did not go, but when the water was low I would go.

29 Q. How old were you when you first became acquainted with the bayou, Mrs. Holder?

A. I expect I was about twelve years old; just about.

30 Q. Did you or did you not, when you were of the age of twelve years, cross and recross the bayou during summer and in times of low water?

A. Oh, yes; I crossed the bayou in low water; walked across it and rode across it dry-footed.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

31 Q. When you first became acquainted with that island your brother-in-law, Mr. John Garrett, lived on the island?

A. He lived on the island, on the side next to the river.

32 Q. Did he own the land?

A. I think he did; yes, sir; I think he owned a farm there; I think he owned it.

33 Q. Do you know when he purchased that land?

A. No; I don't know.

34 Q. He owned it before your recollection?

92 A. Yes; before I took any notice of it.

35 Q. He afterwards moved over onto the Indiana side of the chute, I understood you to say?

A. Yes, sir; on the Indiana side of the chute.

36 Q. Then he subsequently moved over on the Kentucky side of the chute?

A. Yes, he then moved over on the Kentucky side, and he lived there until he died.

37 Q. In what year did he die?

A. Well, now, I cannot tell you, because such things I didn't pay no attention to to recollect. I cannot just tell you, just exactly; but my sister lived there after she was a widow.

38 Q. How many places, or where were those dry places that you crossed over—near the head of the chute?

A. Right at the head of the chute it was dry as it could be, and down a piece—away down—I cannot just tell you how many miles, but it looked to me like it might be more than a mile, mebbe, in different places I crossed it as dry as could be.

39 Q. That was when the water would be very low?

A. The water was in a low stage in the summer.

40 Q. At an ordinary stage of water the water would run through the chute?

A. Not at an ordinary stage: when it was a little above.

93 In common good stage of water in the river it was through the chute, and when the water was up pretty full, when the river was up pretty full, then the bayou was full, just as it was fed by the river; you know, it was fed by the river.

41 Q. Has the bed of the bayou near the head shifted a good deal, since you first knew it, towards the Kentucky shore?

A. I have not seen the head of that bayou for thirty years; I don't know how it looks. You see, I moved up in Warrick; my sister's family died off, and I did not visit it.

42 Q. In your earliest recollection, on which side of that island was it generally understood that the Kentucky line ran?

A. Well, I cannot tell you that. On which side of the island?

43 Q. Yes.

A. I don't know that, because I thought that the water just divided—I thought the water was the line.

44 Q. It does not matter what you thought; we just want to know what the people generally regarded the land.

A. I cannot tell, because I never heard it talked of in them days.

45 Q. How long has Mr. Garrett been dead?

A. Mr. Garrett has been dead a good while; I cannot tell just
94 how many years, but it has been—according to the age of some of my children—I think it has been over thirty years.

46 Q. Who owns the land on which he lived on that island?

A. I cannot tell you now who owns it.

47 Q. Who purchased it from him or from his heirs, do you know?

A. I don't know, indeed. I cannot tell you anything about that. He left children, and I don't know how they made it; and his children that he left, that was alive, was not my sister's children at all. He had his first wife's children.

48 Q. Where are his children living now?

A. I cannot tell you; they are most generally dead, I guess. I don't know whether there is any of them living yet; there may be one or two of them alive, but I cannot say.

And further the witness saith not.
(Signature waived by agreement.)

The said ELIZABETH AIKEN, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

95 1 Q. State your name.

A. Elizabeth Aiken.

Q. What is your age and your present residence?

A. I live in Knight township, Vanderburg county; I will be 61 years old if I live until next February, the 18th day.

3 Q. How near do you live to Green River Island?

A. I live within about a mile.

4 Q. In which direction?

A. I live east—northeast.

5 Q. How long have you lived where you live at present?

A. If I stay there until the 27th day of this month I will have been there forty years.

6 Q. How near do you live to the river?

A. I live about fifty yards from the bank—the furtherest part—now, at the present time.

7 Q. How much land do you own?

A. I own 720 acres of land. I have got forty acres of hills and the rest on the bottom right where I live.

8 Q. Is your land close to your house?

A. Yes, sir; my house is sitting on part of it; it is all joining except forty acres; that is out in the hill.

9 Q. Where did you live before you went to live at your present residence?

A. I lived in what is called German township now; it was
96 Armstrong township then. It is twelve miles from Evansville, southwest. I was born and raised there.

10 Q. When did you first become acquainted with Green River Island bayou?

A. In 1848. I was married in July, and I went up there; went right alongside of the island, all the way in a hack, the first time I was ever there. I never was there before I was married, when I went up there and lived for a while on the farm adjoining where I live now. The farm where I live now was owned by McCallister's heirs.

11 Q. Have you had occasion, since the time you went to your present residence, to drive along the bayou and to Green River Island, or not?

A. Yes, sir; quite a number of times I was. Our stock used to go down there, and this old lady was my aunt, and her sister that was living on the island was also my aunt, Aunt Polly Garrett, and when she got sick we would go. My mother-in-law and I went there a number of times—quite often.

12 Q. What was the state of the bayou at the time when you first went to live at your present residence, during the summer, in times of low water?

A. Well, in time of low water there was no water only just in little ponds, just the same as in any other slough. I call it just the same as any other slough, back of my farm. There was no such
97 water as there was there, back of my farm where I live now.

13 Q. In how many places could you cross in times of low water?

A. I have crossed it at four or five places—at McLain's, the head of the island, and down to Mr. Hohall's; we used to go there fishing sometimes; and we could cross lots of other places, in low-water time, except right at these little holes, and the people would throw up dirt and make roads across.

14 Q. Did you cross it on foot or in a carriage, or both ways?

A. I have crossed it all ways; I have went on horseback and went in a carriage, and crossed it on foot a great many times; and went past it every time when I went to the city; we had no other road to go, unless we went two or three miles out of the way. Every

time I went to the city I went right along the bayou bank from the head of the island clear down to the city; it was our road to go to the city; we could not go any other way unless we went up by Mr. James's, two or three miles out of the way.

15 Q. Are you familiar with the tract of land called Buck Island?

A. Yes, sir; I know it well.

16 Q. What is the character of that piece of land at present?

98 A. There is a little bit of a washed-out place along there, but not much more than there has always been, just like any other little lump of dirt that would make any place from high water. If you know how the water does, it will come up and make land and the next high water will mebbe take off all of it. I had a barn out in the field, and the water made quite a knoll there above the barn, I think it was just a round forty acres of land, and the next high water came and took it every bit away, so that you could not see any of it there.

17 Q. Is there an island they call——

A. You could not call it an island; of course, when the river gets up it is just like any other high piece of ground, it will be the last covered up, the same as it would be in the field. I have one right out back of my house that don't get covered as quick as Buck Island does. Buck Island is under before it is.

18 Q. What was the condition of things at Buck Island, so called, when you first moved to your present residence?

A. It has not changed a great deal; I don't think it has. Some winters it would wash out a little more, this side of Buck Island, and some winters it would fill up a little more; it was always a brushy place.

19 Q. How much water in the river above low water does
99 it take to fill up the sloughs which surround this piece of land called Buck Island?

A. It takes right good water. I call it good water whenever it fills those sloughs of Buck Island; the water is up pretty near to the house then. You were there, and when you were looking out back from my house, the water comes up in that field when the water comes around Buck Island.

20 Q. About how many feet of water would you say it would take or be required to fill the depressions and sloughs around this piece of land called Buck Island; about how many feet of water above low-water mark?

A. I would not be positive about it, but I think it would take about twenty feet from the present stage now that we have in the river; it is not real low water we have got now, but it is not a very good boating stage; it is navigable for common boats; it would fill up the main stream, it would fill up real good, and then it would not get all around Buck Island.

21 Q. Would it or would it not be necessary that your farm and the surrounding bottoms should overflow before the sloughs and depressions surrounding the so-called Buck Island would be filled?

A. Our farms and the sloughs would all be full by the time

100 it got full up around Buck Island; all the sloughs around, all the low places on our farms, would be full. Of course, it would not be full there by the house, but it would further west; it would run in above my house there in a slough there by the time Buck Island got covered up.

22 Q. Has that always been the condition of things at the so-called Buck Island since you moved to your present residence?

A. Yes, sir. I have never seen no change since I moved to my present residence. I moved there in 1866—in 1861.

23 Q. Have you observed or have you not observed since you have lived at your present residence the forming and changing of sloughs there through the bottoms?

A. Yes, sir.

24 Q. In your neighborhood?

A. You may have a slough one year in one place and if you throw an obstruction there and stop it, throw trees over or anything like we frequently do, or haul brush, it will cut out a slough in another place somewhere. Of course, the water must have a vent, and it will have it. Sometimes it would wash out dreadful and sometimes it didn't. I have a slough just above my house, and when Mr. Aiken was alive there was just a little break and it made quite a slough these last two winters; and last fall when the water
101 came up the water went through, and it has got very deep and rapid. It is deep in the bayou at the present time.

25 Q. Are there not in the bottoms, near Green River Island, other sloughs besides the Green River Island bayou traversing the country in the same general direction?

A. There is, on my farm. I don't know about the island sloughs. There is a great many sloughs on the island. I was over there after the 1884 freshet hunting for — after the water got down pretty low, and I seen there was a deep slough in there. It gets in there pretty soon, but I cannot tell you how it got in.

26 Q. Do you know of a slough called Bee slough?

A. Yes, sir.

27 Q. What is the character of that slough—its direction?

A. It gets full. The Bee slough that I know of is up above my house.

28 Q. What is its direction and between what points does it run?

A. This slough that I know of runs out back of Mr. Fickas. Mr. James can tell you more about that slough than I can. I know it is a big, deep slough. It gets in there first. It gets in there as soon as in any slough.

102 29 Q. Is Bee slough, or is it not, in the same general direction with the Green River Island bayou?

A. No, sir; Bee slough run- down this way and the island slough runs right through straight.

30 Q. Is the Green River Island bayou in the general direction of the current of the water?

A. Yes, sir.

31 Q. In the country there at high water, I mean?

A. Yes, sir; the current runs right down it, right straight.

Whenever the water gets all over, the current kind of cuts across at the lower part of the farm. I have went more than a hundred times in a skiff to Evansville. Whenever it gets down a little below the head the current kind of cuts across, cuts in towards the city here more, and that is the only way we have to go to the city, unless we go in a steamboat—to go in a skiff over the farms.

32 Q. Have you ever known of any controversy arising over the tract of land called Buck Island?

A. Yes, sir.

33 Q. You may state the details of that controversy as far as you remember them.

A. To the best of my recollection it was in 1849, in the spring of 1849, I went to Evansville. What makes me think it was the spring of 1849, we began to get some articles to keep house ourselves.
103 We were talking of that that summer, and me and my husband started to Evansville to purchase some articles to go to housekeeping with, and Mr. Aiken says, as we were coming along, "There is a fight," and I says, "Oh, a fight," and he says, "Yes," and I was frightened, and I says "Let's not go there," and Mr. Aiken says ——

Mr. KNOTT: I do not see how this can be pertinent in this case, Mr. Snow.

Mr. SNOW: It is understood that all objections are reserved. We will consider everything under objection for the purpose of taking exceptions.

Mr. KNOTT: Very well. I had forgotten the stipulation.

34 Q. You may go on, Mrs. Aiken.

A. We were going to town in a wagon, and Mr. Aiken says, "There is a fight," and I says, "Who is it?" and he says, "I don't know; I will get a little closer and we will see," and we went on up and got about as far as from here to that building right across the street, and we stopped, and I saw young Mr. Garrett get a rail and run Mr. Jim Yates and another man by the name of—I know him, but I cannot think of his name—and another man got to fighting, and there was three or four of them knocking down each other with rails, and they had a general fight over some rails. When
104 we came back the rails was gone. Who got the rails I cannot tell you.

35 Q. What was the fight about?

A. Mr. Garrett told me afterwards. I talked to Mr. Garrett and he told me the fight was over the possession of some rails. Mr. Garrett claimed the land was his and Mr. Yates claimed——

36 Q. Why did Mr. Garrett claim the land was his and why did Mr. Yates claim the land was his?

A. I talked to them both, and Mr. Yates told me he thought the land was his because he thought he ought to have the bayou bank on the Indiana side, and Mr. Garrett claimed that he ought to have to the middle of the deep water in the bayou. He claimed that it had been made to him. That is what they both told me. I talked

to both of them about it. We were neighbors, and they were at our house visiting.

37 Q. Were or were not the claims of Mr. Garrett and Mr. Yates, as they stated their claims to you, founded upon grants from the States of Indiana and Kentucky, or were their claims upon other grounds?

A. They claimed—Mr. Garrett claimed—that the laws of Indiana gave him to the low water in the bayou; to the lowest water in the bayou; and Dr. Yates had been claiming to him that the water ought to run over by Mr. Garrett's house; that that was not
105 the main channel, or it had not been in other days; that it might be now, but it had not been before.

38 Q. Do you know whether there was any litigation arising out of this fight?

A. Yes, sir; I know they had a fuss about it, and talked about having a lawsuit. I don't think they ever sent it to court, anything about the fight, but then they had a lawsuit about the property that I cannot tell you how it came out.

39 Q. You mean to say the lawsuit was about the rails and not about the fight?

A. Well, about the rails and about the property, not about the fighting. They never said anything about the fighting. If they did I didn't know of it.

40 Q. Have you ever heard any person who is now deceased say anything with regard to the state of Green River Island bayou during the summer and in times of low water?

A. Yes, sir. I have heard my father-in-law frequently talk about it. He lived with me about eight years after my mother-in-law died. We first lived two years together when I went to that place. Afterwards, when my mother-in-law died, he lived at my house and died at my house. He often spoke and said it was just like any other darned little slough; little tugs run up in high water and they can run any other place in high water. He always said it be-
106 longed to the State of Indiana. He said he thought it ought to belong to the State of Indiana because it was not anything more than another little slough. He said the boats could run any other place when they could run in them.

41 Q. Did your father-in-law say anything to you respecting the bayou going dry in the summer?

A. Yes, sir; he said it always went dry ever since he knew it.

42 Q. When did your father-in-law die?

A. He died, to the best of my recollection—I have got it set down at home—he died in 1866 or 1869; I think it was in the fall of 1866 he died or 1869.

43 Q. How old was your father-in-law at the time of his death?

A. He was seventy-six years old, going on seventy-six years old, when he died.

44 Q. Was he, at the time he was speaking of Green River Island bayou, speaking of his earliest recollection, or was he not?

A. Yes, sir. I often heard him speak of it; he spoke of it a number of times. You know there was a controversy about it, and, of

course, it would naturally lead to having conversations about it, us being nigh neighbors. He said it always went dry in low water. Unless we had high water, unless steamboats could run any place, why, he said they couldn't run there.

45 Q. Do you know whether there is at present or is not a
107 tow-head beyond Green River Island towards the Kentucky shore?

A. Yes, sir; I have been on it; was on it about a year ago.

46 Q. Is it or is it not at present connected at times of low water with Green River Island?

A. Yes, sir; it is dry at times of low water; you can walk across.

47 Q. How long, how many years, have you been familiar with the tow-head?

A. It seems to me, the best I can recollect, it has been twenty-three or twenty-five years. We had some hogs and cattle get over there, and we had to pay damage; they walked across, and we had to pay damage that they done over there. Some men had some water-melons and corn, a small spot, and they didn't leave their cattle get over there, and we didn't know—they went away in the daytime and came back at nights—and they destroyed nearly all of it, and they catched the cattle over there and made us pay damages, about twenty-four or twenty-five years ago.

48 Q. Did you or did you not know of people generally crossing between the island and the tow-head at times of low water?

A. I have seen them cross many times; I have seen them go hunt turtle eggs; people come from the city to go hunt turtle eggs; and then our own folks did so.

108 49 Q. How many years ago, can you remember, was this passing between the island and the tow-head done?

A. Oh, fifteen or twenty years ago, parties coming up there from Evansville, and a young man that was at Garrett's; we used to go there, and we used to go there to gather shells for the graveyard; I have gone there many times and walked clear over the tow-head.

50 Q. What is the character of the soil between the island and the tow-head?

A. Sand.

51 Q. What is the character of the soil on the tow-head?

A. It is sand—sandy nature.

52 Q. What is the vegetation on the tow-head?

A. Cotton-wood and willow and weeds, horse-weed and grass.

53 Q. How old would you think the oldest vegetation on the tow-head would be?

A. The oldest of it has been cut down and made into fence rails. I bought five thousand of them eight or ten years ago.

54 Q. How old were those trees?

A. Not over fifteen or twenty years. Cotton-woods grow to be very large in a few years, and they were all cotton-woods; but that tow-head was a small place when I first came to that farm.

55 Q. About how many acres was it when you first came to
109 that farm?

A. I don't think, in my first recollection, there was more

than fifteen or twenty acres. I heard people talk about the warrant—the Garretts and Mr. James and all the neighbors—they would get together and talk about their Kentucky warrants, and Dr. Talbott's heirs came down from Louisville to work in this bayou, and I heard them talk about it; they were down here about ten years ago or twelve.

56 Q. How many acres are there in the tow-head at present?

A. I judge there would be a hundred acres in all of it, woods and all; I don't know; there might not be that much and there may be more; it caves off some on one side and makes on the other side; it makes on the side next to the island, and it caves off on the other side some.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

57 Q. This fight you witnessed up there took place in 1849?

A. I think it was about 1849, to the best of my recollection; I am not right positive about it, but I think so from fixing it by——

58 Q. Dr. Yates owned the land on the island, did he?

A. Yes, sir; he owned a farm on the island.

59 Q. Mr. Garrett owned the land on the opposite side of the chute?

A. Yes, sir.

60 Q. Near the head of the island?

A. Yes, sir.

110 61 Q. Mr. Yates claimed that the accretions to his land gave him title to the opposite bank of the chute, did he?

A. Mr. Yates claimed that he ought to go to low-water mark, and he claimed that low-water mark had been in other days farther over on the Indiana side than what it was at the present day; at the present day the low-water mark would have been over on the other side of Buck Island from here, and the Doctor claimed that it was on this side; he claimed it was over further towards Indiana, close to this Garrett farm. The old lady spoke about the last farm she moved away from and went over on the home farm. She first lived on the island and then moved over, and her husband died, and then she moved back on the island again.

62 Q. Dr. Yates claimed his title under Kentucky?

A. Yes, sir; under Kentucky law.

63 Q. And Mr. Garrett claimed his under Indiana law?

A. Yes, sir.

64 Q. He claimed he ought to go to the middle of the chute?

A. Yes, sir; Mr. Garrett claimed he ought to go to the middle of the present chute.

65 Q. And there was a lawsuit about it?

A. They had a lawsuit. I don't know just exactly how it terminated. I know my husband and my father-in-law was

111 witnesses; but in them days I had a family of children and I didn't lend a very attentive ear to it like I do now, because I am a widow woman now and things interest me, and has for a

number of years. I don't have much house affairs to attend to, and I generally know what is going on in the neighborhood and in the land business.

66 Q. You say you heard your father-in-law speak about that chute?

A. Yes, sir; I have heard him speak about it many a time.

67 Q. And he claimed that the line ought to be along south of the island, did he?

A. Yes, sir; he claimed it ought to be over further, where the deepest water is now; he claimed that the whole island ought to be in Indiana, but he said if Kentucky did reclaim the island it ought to go to the middle of the bayou, and he said——

68 Q. It was the general understanding that the State line ran between the island and the Indiana side?

A. Yes, sir; it was considered so; when anybody would cut up any bad depredation there they would run over on the island to keep out of being arrested.

69 Q. The officers of Indiana did not pursue them over there?

A. Why, they could not; they followed them to the bayou
112 bank, and that's all the further. Why a man cut a man all to pieces up at my house and agin I got the sheriff up there he skipped over on the island and just laughed at him; that was thirty years ago.

70 Q. The officers didn't pursue him over there?

A. No, sir; I guess they didn't.

71 Q. He declined to pursue him, of course, because he had got over into Kentucky?

A. He had got into Kentucky, but he never claimed that Kentucky ought to have that ground. He always——

72 Q. I understand all that. This place you call Buck Island, how wide is that? That is the little island in the head of the chute, is it not?

A. Yes, sir.

73 Q. How wide is it?

A. Oh, I don't know; it is not very wide. I think somebody measured it the other day when they were fussing about it. I had a nephew that tended it a year or two; three or four acres; it isn't wide; a little bit of a space of ground.

74 Q. That is right in the head of the slough?

A. Yes, sir; but in taking Buck Island why it takes in a good slope of land on either side, you know.

75 Q. That is, from the bank on the island to the bank on the Indiana shore there is some considerable distance?

A. From the bank on the Indiana shore to Buck Island
113 there is considerable distance. There is a big deep washed-out place right in behind Buck Island. It don't run up as far as the river mouth of the bayou; it is just a little deep pool there behind Buck Island.

76 Q. From the Indiana shore to Buck Island how far is it?

A. From the head of Buck Island?

77 Q. Yes.

A. About three times as far as from here to that house over there; just a little ways; not any farther than from here across the street; three times as far as from here across the street, to the middle of Buck Island, that would be. That would be my best recollection; I have not walked over it. I was over there last fall hunting hogs. It is not very far. It is right close to my house, you know. My land joins this land that is in dispute.

78 Q. Does your farm lie above or below the mouth of Green river?

A. It lies right at the mouth. A good portion of it lies above. I own a mile and three-quarters above.

Question by Mr. SNOW:

79 Q. You mean at or opposite?

A. Right opposite the mouth of Green river I live.

Questions by Mr. KNOTT:

80 Q. This bayou you speak of that formed back of your land in high water—where does that make in?

114 A. It comes in here at Evansville and over above my house, close by where James lives—away above—a mile and three-quarters.

81 Q. You mean the water backed up?

A. Yes, sir; comes right up to my house.

82 Q. What it don't make in above you backs in?

A. Except one little slough that has made within the last two years; it comes in that pretty soon.

83 Q. Where is that Bee slough you speak of?

A. Well, it is almost north from my house; it goes in commencing up in the east and goes around north and goes clear down to the city, almost.

84 Q. Where does that make in?

A. It fills in there above and fills in below here; it fills in from above me, away up above.

85 Q. Has this slough between Green River Island and Indiana filled up any?

A. Well, it was filled up a little, not very much; some years it fills up a little and the next year maybe it will wash out. If you are acquainted with high-water land, one year it will come in and the water make a big pile, and the next year it will come and wash it out. It may be this year filled up nearly level, and maybe the next high water that comes will wash out.

86 Q. Does not that island lie in the eddy?

A. Well, sometimes; but when the water is all over it

115 there is no eddy; there is an eddy out where it wears in, right close to the big tree towards the head.

87 Q. Is not the Kentucky bank, opposite that bank, continually cutting, and has it not been continually cutting away for years?

A. It has cut away a little, very little; the bank where I live is cutting away.

88 Q. At the lower end of the island?

A. It it is cutting off a little, but very little; it has cut off very little.

89 Q. How far below the island is this encroachment on Henderson county that is threatening?

A. That is about three miles.

90 Q. Three miles below the island?

A. Yes, sir; it is opposite the island, but you know the tow-head is between it and that big cut out that is going into Henderson.

91 Q. The Kentucky bank is falling away and that tow-head is forming in between this island and where it is cutting away on the Kentucky side.

A. The tow-head has been forming there before that ever cut.

92 Q. Is it not a fact that the river along that island is cutting away the Kentucky shore and has been cutting it away for years?

116 A. No, sir; just only that place. It has been cutting that for the last twenty-five years that I know of, and it may have been cutting way before, but then I never knew of it.

93 Q. When you first knew the tow-head you say it was about twenty-five acres of land?

A. Why, I think so. To the best of my recollection, twenty or twenty-five.

94 Q. And it was then distinctly an island?

A. Yes, sir.

95 Q. At all stages of water?

A. No, sir; it was called a tow-head. We didn't call it an island.

96 Q. But it was an island, nevertheless—a small one?

A. Call it whatever you please, but we call it a tow-head.

97 Q. How far was that tow-head from the bank of Green River Island when you first recollect it?

A. Oh, it was two hundred yards; closer now than it was when I first knew it.

98 Q. Now, how much has it made on the south side—how much accretion has there been on the south side?

A. Not very much. It has not made very much on the south side, to my knowledge. I came through along there in April, on a steamboat, and took particular notice. It has not made a great sight, and is caving off some.

99 Q. How many acres does the tow-head contain at this time?

117 A. I am not sure; but think a hundred acres.

100 Q. How long is that tow-head?

A. I cannot tell you. It is good long strip of ground.

101 Q. Where has this land accumulated to make a twenty-five-acre island now contain over a hundred acres?

A. It has accumulated at the foot and side next to the Indiana shore and at the head, accumulating all the time; and I have been along there every year, and every winter I always go down there, and sometimes the bayou gets full of drift and a skiff cannot go in until very high water, and then we can go over our farms easier than through the bayou.

102 Q. You spoke awhile ago about the current in high water cutting across the island; did you mean at the head of the island?

A. No, sir; down towards the foot, not far from Evansville. Whenever the water gets up like it was in the 1884 or the 1883 freshet the current kind of goes out into the river.

103 Q. That is down at the foot of the island?

A. Yes, sir.

104 Q. But, except when the water is very high, as it was in 1884, there is back water there and the island is in the eddy?

A. You cannot say it is an eddy. No, sir; there is not much current in that bayou in high water; there is not as much as
118 there is through my fields back of the farm.

105 Q. Is it not a fact that the current comes down the river and then trends back up behind that?

A. Oh, no; it don't do that. The water comes down the river and kind of backs up on the foot of the island, and then the main current runs right through our farm going down, right back of my house. When the water gets very high steamboats come up through my farm when they don't go up through the bayou.

106 Q. I am not speaking of such high water that covers the whole bottoms; I am speaking about ordinary high water, when the banks are not overflowed.

A. Then we go down the river. It has to be pretty high water to make the water go through the bayou. It cannot run across this ridge; the bayou has got a high ridge through it—the whole way through.

107 Q. The water that gets into the bayou is back water?

A. It fills up from the back first. It has to come down from Evansville here and back up before it gets so that it can run in at the head.

108 Q. How much do you think that chute has filled up at the head?

A. Well, it has filled up considerably since I knowed it. It changes now. Sometimes it is deeper and sometimes it is higher. It is nothing but sand, you know. The willows are all
119 growing up now. There used to be not a willow there—not a sign of a one.

109 Q. How long have the willows been growing there?

A. Well, they have been several years trying to come up, but they have not got a stand until the last three or four years—that is, at the head.

110 Q. Were not the willows growing there before Mr. Yates got that land? Didn't he cut them down?

A. Oh, there was some kind of timber there, but not right in the mouth of the bayou.

111 Q. They are growing right in the mouth now?

A. Well, pretty near. There is willows all along. There is willows on my farm. When I bought it, thirty years ago, there was no willows there, but there is now, all along under the bank.

Re-examination.

Questions by Mr. A. H. SNOW, Esq.:

112 Q. Is there a bluff bank at the edge of your ground towards the river?

A. Yes, sir.

113 Q. How near is the end of that bluff bank to the head of Green River Island, so called?

A. Well, it is three hundred yards, and more, too.

114 Q. What is the nature of the bank between there and the head of Green River Island, so called?

A. It is a kind of sloping bank from my bluff bank to the
120 head of Green River Island. It is a kind of a sloping bank; it does not make in very much, nor it does not cave off a great sight.

115 Q. Is the bluff bank next to your land wearing off rapidly?

A. Yes, sir; up by my house until you get to the bend; after you get to the bend it is not wearing off. You know I took you out and showed you that day—from that bend on down it is not caving.

116 Q. How much does it wear off opposite your ground?

A. Some winters it will lose a half acre and some winters not any. It didn't lose any this winter. It is owing to the nature of the water and wind.

Recross examination.

Questions by J. PROCTOR KNOTT:

117 Q. I didn't understand you where you say it is cutting away on your ground.

A. Right in front of the mouth of Green river, right in front, all the way, up above east.

118 Q. How far above this chute?

A. I own a mile and three-quarters.

119 Q. How far is this cutting away?

A. About three or four hundred yards; and then whenever it turns, it makes a turn to go down, it does not cut away; it is really making some there all the time.

120 Q. That is, down towards the chute?

121 A. Yes, sir.

Question by Mr. SNOW:

121 Q. How far does your land extend along the river?

A. A mile and three-quarters front I have got all along the river clear down the bayou line, what they are fussing about. I know I am there every time whenever the surveyors would come.

Questions by Mr. KNOTT:

122 Q. At those places where you cross the bayou you say the people have roads thrown up?

A. They would put poles across and throw dirt on them, but then

there was no water; it was of a miry nature, all except right in the sand.

123 Q. How high would the grade of these roads be?

A. About a foot; just enough to cover the poles so that you could go across; that is all.

124 Q. That would be in shallow places?

A. At the head of the island we always went across dry on the sand.

125 Q. At these other places they had a road?

A. I went over there by McLain's place when there was nothing at all. Of course, every high water that comes would wash it; sometimes it would leave a hole that would have to be fixed up.

126 Q. And sometimes it fills it up?

A. Yes, sir; there would not be anything there; we would go right over.

And further deponent saith not.

(Signature waived by agreement.)

122 The said FRANCIS D. ALLEN, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. Francis D. Allen.

2 Q. What is your age and present residence?

A. I am sixty-nine years old and past—nearly seventy.

3 Q. And your residence?

A. I live in Center township, about three miles from Evansville.

4 Q. What is your occupation and what has it been?

A. My occupation now is a farmer; my occupation has been that of builder and contractor.

5 Q. Where did you live before you lived at your present residence?

A. I lived in the city.

6 Q. Are you familiar with the Green River bayou, so called?

A. I am not now, sir. In earlier times, in my early life here, I was quite familiar with much of it, the lower part, not the upper part. I have been all up and down it.

7 Q. What was the occasion of your becoming familiar
123 with the Green River Island bayou?

A. The occasion of my being there was to shoot squirrels and ducks. That was about all that took me there in the early times. It was a wild place when I first went there, the lower part of it.

8 Q. Did you go into the region frequently?

A. Yes, sir.

9 Q. Did you go at all seasons of the year?

A. No, sir; usually in the spring and summer and fall; not in the winter.

10 Q. How many years have you been familiar with the Green River Island bayou?

A. Well, about forty-five years.

11 Q. What was the condition of the Green River Island bayou as long ago as you were first familiar with it, during the summer and at times of low water?

A. Well, it was during low water there is pools all along in what is called the bayou. There are places where we could cross, cross on dry land. There was just ponds, so far as ever I went up and down it, and I have been up and down, but I am not as familiar with the upper part as I am with the lower part, by crossing it backward and forwards. It was simply on my shooting excursions; and sometimes I would find a little water and cross on a log, and sometimes find dry land to cross on.

124 12 Q. At how many places would you judge, at the time you first knew the bayou, could you cross it on dry land?

A. I never counted them, had no occasion to remember them, and cannot say; but several places I know that could be crossed on dry land; I had no occasion to note them.

13 Q. During how long a period of the year did the bayou stay in this condition of pools and dry crossings?

A. Well, when the river was down and at an ordinary summer stage we could always cross on dry land, cross the bayou at places; at places we could cross the bayou on dry land at what is called a summer stage of water; it was good boating stage—steamers could run on the river. At extreme low water, of course they could not, but during the whole summer season I have been there—from spring to fall.

14 Q. How much water above low-water mark should you think, at the time when you first became familiar with the bayou, it would have taken to have made the water run through the bayou?

A. I cannot tell that; I had no occasion for noting it; it seems it me it is a good deal, it takes a good deal. All I can judge by is that the water was in a very good steamboating stage when that would be dry. That is all I can tell you. I have no means of knowing just how much higher it was than lower-water mark.

125 Cross-examination.

Questions by J. Proctor Knott, Esq.:

15 Q. Can you now recall any particular year when you crossed the bayou?

A. Yes, sir; when I was subpœnaed to come here I knew of a year. By referring to the records—my books and records—I could just learn the exact year, and that is the way I am so exact about its being forty-five years ago; it is by records I kept of my business matters, and I knew that that year I made so many excursions with men to shoot there.

16 Q. Now, what particular time of the year?

A. In the spring of the year, about the time we would hunt squirrels; it was April and May; and then in the fall of the year we made excursions there to shoot squirrels and ducks on them ponds. You see, at that time, on the lower part of the bayou, there was not much improvement there; it was wild and unimproved; the settlement, the cleared land, was all on the other part, in the neighborhood of Mr. Aiken's and Garrett's, and not on the lower part.

17 Q. They lived upon the upper end of the island?

A. Yes, sir; I think I was at those places. I knew those men, all of them.

And further deponent saith not.

(Signature waived by agreement.)

126 The said JOHN JAMES, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. John James.

2 Q. What is your age and present residence?

A. Sixty-two years and past.

3 Q. Where is your residence now?

A. Up here in Knight township.

4 Q. How far do you live from Green River Island, so called?

A. About two miles.

5 Q. In which direction?

A. Above Green River Island.

6 Q. How long have you lived where you live at present?

A. About sixty-two years; I was born there; my lifetime.

7 Q. How old were you when you have your first recollection of Green River Island bayou?

A. I don't know; twelve or thirteen years, I reckon. I never paid much attention to it.

8 Q. Were you at that age well acquainted with the bayou?

127 A. Oh, yes; I have been acquainted with it ever since I was acquainted with the Ohio river. Passing down I often passed it going to town and coming back from town that way. It used to be in the early days that that was about the only road. This road they call now the Green River road was no road at all. It was through timber and bushes, and you could not pass through there with wagons or nothing.

9 Q. What was the condition of the Green River Island bayou at the time when you first became familiar with it?

A. When I first recollect it it was growed up full of timber and riff-raff.

10 Q. What was the condition of the bayou at the time you first became familiar with it, in the summer and at times of low water?

A. It would go dry at anything like a low stage of water.

11 Q. Would it be entirely dry?

A. There would be holes along.

12 Q. Would the land between the holes be dry ground?

A. In places it would be dry and in places holes.

13 Q. Would you cross between those places?

A. Yes, sir; cross between the holes.

14 Q. Was the ground dry?

A. In some places you could not hardly ride horseback on account of the quicksand. You understand how that is; it looks dry,
128 but in some places it would not hold you up; in some places it would not hardly hold a man up.

15 Q. Did you frequently or not cross?

A. I never crossed very often; I never had any particular business down there; in my young days I didn't cross much; I had no business there. There was no trouble in crossing over any place where the water stood but on account of the quicksand; the water would not have been so deep to stop you.

16 Q. How much water above low-water mark should you judge it would have taken there when you first recollect Green River Island bayou to have made a flow of water through the bayou?

A. I cannot tell you anything about that.

17 Q. Would it require an ordinary stage of water in the river?

A. Oh, yes, sir; it would require an ordinary good stage—twelve or fifteen feet, I reckon—to run it through above low-water mark.

18 Q. Are you acquainted with the tract of land which is commonly called Buck Island?

A. Yes, sir; I am acquainted with it.

19 Q. You may state what the character of that land is at present and what it was at the time you first knew it.

A. Well, part of the land in there was cultivated—they
129 were raising corn on the land—and my recollection is there was a kind of slough, and you could not raise anything on it; it was a pretty big scope of land—that is, where Yates lived; not on the island, but this side of the island.

20 Q. Where were the sloughs situated with respect to Buck Island, so called?

A. One on one side and one on the other.

20 Q. How deep were these sloughs at the time you first were acquainted with the region called Buck Island?

A. Tolerably good sloughs; I don't know just how deep particularly; them was what Yates and them was fussing about; the land that was made, not particularly the island; it was land that was made; *it was land that wvs made.* Yates claimed to the Indiana line. I was there one time when they had a survey. He was going to settle it by a Kentucky surveyor and an Indiana surveyor, where the line was at the time he owned the land. Garrett owned one side and Yates the other. I was a guardian, and I was there, too; and we run the line up away back in Garrett's field a few hundred yards back from the edge: he said that was the old original line of the first survey, and it might have been for all I know; but then

he didn't hold it, nor couldn't hold it, and he had his man Easton from Kentucky, and they didn't agree at all; they put it in
130 the middle of the chute, and that would not do; Yates would not have it, and so that survey and trouble was all for nothing, and there has been nothing done about it since that I know of.

21 Q. Speaking of the first survey——

A. (Interrupting.) You mean the first survey of the Government? You know where they all stopped—right at the edge of the bank on each side, Kentucky lines and Indiana; they didn't none of them go into the chute on either side.

22 Q. How much water above low-water mark would it have taken at the time you first knew the region called Buck Island to have filled up the sloughs surrounding Buck Island?

A. It would not have taken over twelve or thirteen feet to run through.

23 Q. Twelve or thirteen feet above low water?

A. There was a kind of a slough on each side of it. Yates claimed all the chute clear over. There is ten acres that has been made since the first—I reckon it first—since the first survey of the Government, and Yates claimed that was his, and he told me he did not know know how to get Garrett off of it. I says, "Go whip him off of it; that is the only way you can get him off;" and he didn't get him off, neither.

24 Q. Are you familiar with the Green river tow-head, so called?

131 A. Yes, sir; I have known that; there has been something there in my first recollection.

25 Q. How large a piece of ground was it at that time?

A. Twelve acres; maybe not that much.

26 Q. How many years have you known that tow-head?

A. Since forty-five or fifty years.

27 Q. What was the nature of the soil on the tow-head when you first knew it?

A. It was mixed sand and clay.

28 Q. Was there any growth on the tow-head?

A. Small timber starting—cotton-wood and willow.

29 Q. How old would you judge the timber was?

A. I should not take it to be over six or seven years old—the oldest there was on it then.

30 Q. How large is the tow-head, in your judgment, at present—how many acres?

A. I cannot say; I never paid any particular attention to that; it is not very wide.

31 Q. About how many acres should you judge the tow-head to contain at present?

A. In all nearly a hundred acres, maybe; I don't know.

32 Q. Is the tow-head at present connected with the main Green River Island?

A. I think there is water now—I am not sure—running through.

33 Q. Is it connected with the main Green River Island in summer and at times of low water?

132 A. Yes, sir; in summer, when the water is extremely low, it is dry; it has been the case for fifteen or twenty years. I know I had some cows that went over there one time when it was dry, and they were down there and got into trouble before I knew where they were.

34 Q. You said you were ten or twelve years old when you first became familiar with Green River Island bayou?

A. Yes, sir; I might have been younger than that; I have been acquainted with it ever since I can recollect—the island and the tow-head.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

35 Q. You spoke of timber growing in this chute?

A. Yes, sir.

36 Q. When you first recollect it?

A. Yes, sir; timber starting up and drift-logs, in my first recollection.

37 Q. Large drifts?

A. No, not very; but so that boats could not pass in.

38 Q. This timber of which you speak grew on what is known as the second bank?

A. Well, kind of on the second bank.

39 Q. There was an open channel?

A. There was not enough for boats to pass through in; there were places where there was no timber—not much, if any.

133 40 Q. I say there was an open channel between what is known as the second banks of the chute, and the timber was growing on the second banks?

A. A small place; yes, sir; but choked with drift mostly.

41 Q. Now what was the character of this timber that you say was growing on the second banks of this chute?

A. It was cotton-wood, mostly all cotton-wood; some sycamore, but mostly cotton-wood.

42 Q. How old did that timber have the appearance of being?

A. It did not have the appearance of being very old—fifteen or twenty years, or something like that.

43 Q. Was there a pretty thick growth of timber on these second banks?

A. In places there was and in places there was not.

44 Q. You say it had the appearance when you first recollect it of being fifteen or twenty years old?

A. Yes, sir; a cotton-wood you cannot tell much by the height; it is a quick growth, and you cannot tell so much about that as you can tell about other timbers.

45 Q. That timber has been cut away?

A. No, sir; there is some in there yet.

46 Q. The same character of timber?

A. Yes, sir; in places. Where the men claimed it—one claimed on one side—and they cut it out and plowed it.

134 47 Q. Plowed on what is known as the second bank?

A. Yes, sir; where none of them owned it—where Indiana didn't own it nor Kentucky didn't own it—I owned a piece of land there on the bayou, had it measured off, and they stopped me at the edge of the bayou bank.

48 Q. Was that on the Indiana side?

A. Yes, sir; the Indiana side; and I saw titles from Kentucky. They stopped on each bayou bank on the Kentucky side.

49 Q. That was the ground opposite to where you were?

A. Yes, sir. Well, all down the chute there it is the same everywhere. They will not let them go by the old regular survey on either side; they don't pay no taxes in the chute on neither side, yet they claim it and work it.

Re-examination.

Questions by Mr. SNOW:

50 Q. What is the average width of what is known as the bayou channel to-day?

A. From one line to the other?

51 Q. No; just the bayou channel, where the water stands?

A. I cannot tell you about that. Some places it is wider than it is at other places.

52 Q. Well, in its narrowest and widest spots, say, or give the average.

A. It is narrow, twenty or thirty feet in places, and some places you would not see any difference. It looks to be all level
135 across. In other places you could see a little cut. You could hardly find the center of that chute unless you would measure it.

Recross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

53 Q. You say twenty or thirty feet. Now, how far is it between the banks of this chute at the widest part?

A. I cannot tell you; I never noticed about that.

54 Q. Cannot you tell as well about the distance between the widest part as you can between the narrowest part?

A. Some places it don't run wide. It is owing to how the bank on the other side or this side runs whether the place is narrower or wider.

55 Q. You have really never measured the width of that chute any place?

A. No sir; never had any occasion to at all, nor I never seen it measured. I don't suppose there is a man living that has ever measured across it, because we never have had occasion to measure it.

And further deponent saith not.

(Signature waived by agreement.)

136 The said MATTHIAS ANGEL, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.
A. Mathias Angel.
2 Q. What is your age?
A. I was born in 1819, September 23rd.
3 Q. Where were you born?
A. I was born in the State of Ohio—Galia county.
4 Q. When did you first move into this county?
A. I moved into this county in the spring—in March, I think—of 1829.
5 Q. Have you always, ever since that, lived in this county?
A. Yes, sir; in Knight township.
6 Q. Where have you lived in this county?
A. Within a half or three-quarters of a mile of where I first settled, and then I bought that place where I live now.
7 Q. Where do you live now?
A. Just a half mile from the island, half way down.
8 Q. How long have you lived where you live at present?
A. Ever since 1849.
9 Q. Where did you live before that?
137 A. I lived at General Joe Lane's place.
10 Q. Where is General Lane's place, in this township or county?
A. It is right on the river; right down there.
11 Q. How near is General Lane's place to Green River Island?
A. I guess about two miles.
12 Q. In which direction?
A. It is right south; southeast or southwest.
13 Q. How long did you live on General Lane's place?
A. Over two years.
14 Q. Where did you live before you lived on General Lane's place?
A. My father lived there; he bought Lane out.
15 Q. How long have you lived in the vicinity of Green River Island?
A. Ever since 1829.
16 Q. When did you first become familiar with Green River Island bayou, if you are familiar with it?
A. I cannot tell you exactly how old I was, but then I was a pretty good-sized boy. I was about eight years old when my father first moved there, and I was a pretty good-sized boy. I was at old man Garrett's place, that old lady's father, and went there many a time in the evening. We used have church at his house—
138 that was a good while ago—but I never paid no attention to know what year it was.

17 Q. About how many years do you think you have been familiar with Green Island bayou?

A. It must have been fifty or sixty years since I have been traveling on it.

18 Q. What was the condition of Green River Island bayou in the summer, at times of low water, when you first became familiar with the bayou?

A. As well as I can recollect, when I was a boy, when I used to go down there—I used to go down there—I used to go to church there. Old man Garrett used to have meeting on his place when he lived on the island, and we used to take the road down the river, and go on until we came to the head and walk right across, right across on the head of the island, and go to the south side, next to the main river, until we got to Garrett's house. The old man's place was a little below the head; it was, I think, about the middle of the tow-head.

19 Q. At how many places could you cross the bayou at the time when you first became familiar with it?

A. I never crossed only down there where that road was from Bill McLain's place, right straight across, from his ferry landing right across on the Indiana side.

20 Q. Do you know whether there were or were not any
139 other crossings of the bayou?

A. Well, there was crossings there. There were other crossings, but I didn't know them. They asked me what made me come down so far. I don't know how many crossings there were. The road was made on the bank there. I recollect all about that water. I seen that very plain.

21 Q. How much water above low-water mark would it, in your judgment, have taken to have made the water run through the Green River Island bayou at the time when you first became familiar with it?

A. I could tell you; I think it would take just about half way to the top of the hill. I am mistaken; I think near thirty feet it would take before it would go in. It was pretty high when I first saw it. They called it Buck Island. That little island was right plumb in the head, in the chute where the water went in, and it had timber on it, but it didn't look very large to me.

22 Q. I understand you to say you think it would have taken thirty feet of water above low water, when you first knew the bayou, to have caused water to flow through the bayou?

A. I believe it would, as near as I can recollect, because it would take very near that much water to go through. It was
140 pretty high then before the water went in. Right below a little tow-head, or Buck Island, was a pond. There was water in that.

23 Q. Were there or were there not sloughs enclosing what they called Buck Island?

A. That went in in two places; it seems to me like it went right square into the bank and then made a short turn.

24 Q. How much water above low water would it have taken to

have filled up those sloughs that enclosed Buck Island, in your judgment?

A. The sloughs which surrounded Buck Island, I cannot tell you; they must come up this way from below—back water.

25 Q. You say it would have required back water to have filled those sloughs until the whole ground was overflowed?

A. Until it was overflowed at the head; I think that it would take very high water to do that.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

26 Q. You think it would have taken a rise of thirty feet fifty years ago in order to have made water pass through that slough at the head of the island?

A. Well, I cannot say positively it would take that, but it is—now I am just guessing at it as near as I can guess. We rode always
141 on horses and went right down straight on the head of Green River Island, and that place looked to me like it went right up right smart; it made a big rise before it went through that place. If the water has sixty feet of a rise and fall, why it certainly would take half of it anyhow.

27 Q. How much will it take now?

A. I have not been down there; I don't know how the situation is about the head at all.

28 Q. How long has it been since you were there?

A. It is a good while since I have been right at the head.

29 Q. What do you call a good while?

A. Twenty-five or thirty years.

30 Q. You have not been there for twenty-five or thirty years?

A. Not right there at the head of the island.

31 Q. Has it not been longer than thirty years since you were at the head of the island?

A. Well, it might have been—right on the head.

32 Q. At any time when you were crossing there did you undertake to form an estimate about how far the bed of the chute was above low-water mark?

A. I never thought about it, sir.

33 Q. Now, you said in the outset of your examination that you only crossed at one place.

142 A. That is down in the island; that is down at the foot of Green River Island tow-head; I crossed right square from Indiana, right square across in a buggy.

34 Q. Had a road been thrown up across the bayou?

A. No, sir; it seemed to be sandy or dry; I didn't see no throwing up.

35 Q. You spoke about there being a pond below what you called Buck Island?

A. There was water standing there—looked like a pool—down below where Garrett lived—Cory Garrett's place.

36 Q. How long was that pond?

A. It seemed to me forty or fifty yards long.
37 Q. That was in one of the sloughs around Buck Island?
A. Right straight in the main part of the chute, I mean; it seemed to be right in the bed of the chute.

And further deponent saith not.
(Signature waived by agreement.)

143 The said JOHN MILLER, Sr., being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW Esq.:

1 Q. State your name.
A. John Miller, Sr.
2 Q. What is your age?
A. My age is going on seventy; the 19th day of next September I will be seventy years old.
3 Q. Where do you live at present?
A. I live here in the city.
4 Q. How long have you lived in this county?
A. I reckon it is fifty years and a little over.
5 Q. Where did you live when you moved into this county?
A. Right here.
6 Q. And you have lived in Evansville ever since?
A. I am a German; I came into this country in 1838.
7 Q. You have lived in Evansville ever since 1838?
A. Yes, sir.
8 Q. Are you familiar or have you been familiar with the land around Green River Island?
A. I have. Since 1862 I have been gone away from there, and lived in town here since.
9 Q. What were you doing which gave you a knowledge
144 of Green River Island before 1862?
A. I rented there.
10 Q. Where did you rent a farm?
A. Of Cory Garrett.
11 Q. Where was the farm that you rented?
A. On Green River Island.
12 Q. Between what years did you rent that farm?
A. The first year I rented of Dr. Yates.
13 Q. Between what years did you rent the farm?
A. That was in 1841.
14 Q. How long did you rent that farm?
A. Two years I had possession.
15 Q. Where did you live after you moved off that farm?
A. I lived in —. I moved to Indiana.
16 Q. Where did you live? How near to Green River Island did you live in 1843, after you finished renting that farm?

A. Within sixty feet, I think.

17 Q. Within sixty feet of what?

A. Of Green River Island; about sixty feet; that was the length of my yard with the house to it, and over that, or Green River Island bayou, rather.

18 Q. Did you live on a farm that was sixty feet from the bayou after you ceased to rent a farm on the bayou?

A. Yes, sir.

19 Q. Where was this farm that was sixty feet from the
145 bayou—how far from Evansville?

A. About four miles.

20 Q. How long did you live on that farm?

A. About sixteen years.

21 Q. Did you then move to Evansville?

A. In 1862 I moved to Evansville; in the latter part of 1862.

22 Q. The first year that you came here where did you work?

A. On Green River Island, for a man by the name of Lewis Hurley.

23 Q. Were you in that year familiar with the condition of Green River Island bayou?

A. I was not exactly; not the first year.

24 Q. How long afterwards did you become familiar with Green River Island?

A. After I got the farm there in Indiana right opposite Green River Island.

25 Q. What was the first year in which you became well acquainted with the condition of Green River Island bayou?

A. I got married in 1848, and lived out here on Green River road two years.

26 Q. What was the first year? Give that.

A. That was about 1841.

27 Q. What was the condition of the Green River Island
146 bayou in the year 1841, the year that you first became acquainted with it, in the summer and in times — low water?

A. I cannot see any change.

28 Q. You cannot see any change from what?

A. From a bayou.

29 Q. What was the condition in the year 1841, in the summer and in times of low water?

A. It was a little lower; I expect the bayou was right smart lower; it was miry.

30 Q. Did the channel of the bayou in 1841 go dry during the summer and in the time of low water?

A. Just like it is now; it goes dry in the summer.

31 Q. How long did it stay dry, as a general rule?

A. Until the river came up again. Of course, when the river came up the water would go into the bayou.

32 Q. Could you in 1841 cross the bayou on the ground—on dry ground?

A. Oh, yes, sir.

33 Q. In how many places?

A. In very few places.

34 Q. About how many places?

A. Three or four places. The only place that we could cross is about two miles from here.

35 Q. At the lower end of the island?

A. Yes, sir; at the lower end of the island; and then I had to go on the other side down home, and then I worked for Lewis Hurley.

147 36 Q. You are speaking now of a crossing for teams, are you; or are you speaking of crossings for people on foot?

A. On horseback.

37 Q. At how many places could you have crossed on foot, on dry ground, in 1841, in times of low water?

A. In a good many places on foot; sometimes a tree was lying across.

38 Q. I mean on dry ground; I am speaking of crossings on dry ground.

A. Yes, sir; on dry ground.

30 Q. There was how many places in 1841 where you could cross on dry ground on foot?

A. Yes, sir; on dry ground. By taking two or three rails, by taking them along and throwing them in, you could walk across.

40 Q. I am speaking of crossings on dry ground--not on rails.

A. I am speaking of mud; it was miry.

41 Q. Were there any places in the bayou channel in 1841, except these two crossings at the head and foot of the island, where you could have crossed on dry ground, without putting down rails, in times of low water?

A. I reckon not; I don't know of any, unless it is the upper end of the island, next to where the bayou runs in.

148 42 Q. Did you frequently go up and down the bayou or did you generally follow these two large crossings?

A. I don't recollect that I followed any other—only these two crossings—two crossings I only go by at that time.

43 Q. How much water above low-water mark would it, in your judgment, have taken in 1841 to have made a flow of water through the bayou?

A. I cannot tell you that. A good deal, I reckon.

44 Q. Would it have taken an ordinary stage of water, or more or less?

A. Ordinary stage.

45 Q. You consider an ordinary stage what?

A. Eighteen or twenty feet—maybe twenty-five. Since 1862 I don't know anything at all about it.

And further deponent saith not.

(Signature waived by agreement.)

149 The said PETER ZAPF, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. Peter Zapf.

2 Q. What is your age?

A. Seventy-four years old—going on to seventy-five.

3 Q. How long have you resided in this county?

A. Fifty-one years.

4 Q. Have you ever resided in the neighborhood of Green River Island, in this county?

A. I lived up there three years—I lived four years there. I lived two years above the mouth of Green river and two years below—that is, on this side of it.

5 Q. What years were those?

A. I lived there in 1851, and I lived there in 1845.

6 Q. Where did you live in 1845—at the head of the island?

A. No, on this side.

7 Q. In 1851 you lived at the head of the island?

A. Yes, sir.

8 Q. Did you have occasion to go frequently up and down the bayou channel or not?

A. Oh, yes, sir; frequently.

150 9 Q. Were you, in 1845, familiar with the condition of Green River Island bayou?

A. Oh, yes, sir.

10 Q. What was the condition of the Green River Island bayou in 1845, during the summer, and at times of low water?

A. Well, there was ponds in it—here and there ponds; the balance was dry, and you could walk over nearly everywhere, except where those ponds was; but them quicksands was in there, either mud or quicksand, and there you could not go; but there was six or seven crossings where you could go over there just the same as you would go anywhere. I know that. I saw it to-day.

11 Q. The danger at other places was from quicksand and not from mud?

A. Yes, sir; quicksand and mud; there was no water running through—there was little ponds here and there—in the summer time.

12 Q. How much water above low-water mark would it, in your judgment, have taken in 1845 to have made a flow of water through the bayou?

A. I guess it would take, to the best of my recollection, from fifteen to eighteen feet; if a man never measured a thing he cannot tell exactly.

151 Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

13 Q. Was your attention called particularly in 1845 to the height of the bed of the channel above low-water mark?

A. No, sir; it was not.

14 Q. Your estimate, then, is a mere impression, a mere guess of yours?

A. Oh, I seen it every week, and I could see it plain enough, and to the best of my knowledge I think it would take about that much, and I believe to-day it would take more.

15 Q. How much more?

A. Why, I think it would take about twenty or twenty-five feet.

16 Q. Then it has filled up from eight to ten feet since 1845?

A. Yes, sir.

Question by Mr. SNOW:

17 Q. Do you mean that it has filled up eight or ten feet along the whole length of the bayou, or at the head or foot, or where?

A. Just at the head is what I mean, where it comes in.

And further the witness saith not.

(Signature of witness waived by agreement.)

152 Whereupon the further taking of these depositions was adjourned until to-morrow morning, Wednesday, July 11th, 1888, at nine o'clock and thirty minutes a. m.

WEDNESDAY, *July 11th*—9.30 a. m.

The parties met pursuant to adjournment.

Present: The same as on yesterday.

The taking of the depositions was resumed as follows:

The said LEVI HOOKER, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. Levi Hooker.

2 Q. State your present residence and your age.

A. My present residence is in this city. I own a farm out here. I have not been living here longer than two or three months. I own a farm out in Center township.

3 Q. What is your age?

A. I was born in 1810, June 9th, and of course I am

153 seventy-eight.

4 Q. How long have you lived in this county?

A. I have lived here all the time, pretty much. I was three years old when I came here; came here from Tennessee. I cannot recollect, though, when I moved here. It was before it was a State.

5 Q. Have you ever lived in the vicinity of Green River Island? If so, just state where.

A. At that time I lived up there, about three miles above town.

6 Q. In what year did you live near Green River Island?

A. I lived there fifty years ago; it was in 1838.

6 Q. How long did you live at that point?

A. All summer; tended a crop there.

7 Q. Have you since that time, or not, been familiar with Green River Island and the surroundings?

A. Oh, yes; I have been up there often; I have got relations living up there, and have had all the time, and I have been on the island very often; have recently been on the island. I at that time knew everybody on the island. Clay owned a great, a large farm there.

8 Q. In 1838, when you first became familiar with Green River Island, what was the condition of the Green River Island bayou in the summer and during times of low water?

154 A. It was dry—that is, there was no current to it. There was holes of water, as I said before, all the time. I don't think I ever seen it but what there was pools of water along, and but what it was muddy—an ugly place to get across.

9 Q. Could the Green River Island bayou at that time—in 1838—be crossed on foot in the summer and during times of low water?

A. I have crossed it many a time.

10 Q. At how many places could you then cross it on foot?

A. Well, there was two or three places I got across it—one right at the head of the island. I have walked across there too, and then where I lived.

11 Q. During what proportion of the year did the Green River Island bayou remain in this low condition—dry condition—at the time when you first became familiar with Green River Island bayou?

A. All the time when the water was down on the river. Any time when the water was down in the river it was dry.

12 Q. You are speaking now of the time when you were first familiar with the Green River Island bayou?

A. Yes, sir; when the water would be what you call a fair stage for steamboats. At that time it could not come through there. If the water was high it would come through by the bayou. I have seen it that it was deep enough for anything. In fact, you

155 could have run along up the road from here to Newburg without going in the bayou.

13 Q. How much water above low-water mark would it, in 1838, in your judgment, have taken in the river to have caused a flow of water through Green River Island bayou?

A. Well, now I don't know how to answer that qustion. You see, when it would be high enough to be a good stage—what you might

call a good stage for boating on the Ohio river—you cannot come through there then. It took higher water than that to come through.

14 Q. About how many feet above low-water mark should you judge it would have taken to have caused a flow through the bayou in 1838?

A. Oh, sixteen or eighteen feet, anyhow; sixteen feet I will say for certain, I think; I could not tell now exactly. We had no gauge here, nor nothing of the kind at that time, and not much town. At the time I speak of—fifty years ago—we used to fetch wood down—boat it down. There was a clearing all along there; they used to cut their timber up into cord-wood, and we didn't burn coal here; they used to keep wood-boats, and when the water was high they could fetch it out. I have seen that done often; but they could not do it at a low water, or at a common stage they could not do
156 it; but if the river was very high they could go up there with their wood-boats and load them up and boat it down.

15 Q. When the river was at such a stage that they could take out wood-boats through the bayou was it or was it not possible to float boats over the bottom surrounding the island?

A. No; not exactly that. You see they could come down the island when they could not go up the road. I have seen it so they could not go up the road with a wood-boat, but they could go out to these farms and load it with corn anywhere along there on them farms; they could do that at high water; can now if the water is up.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

16 Q. Was your attention ever called during the year 1838 to the height of the bed of the island chute above low-water mark in the river?

A. Well, I cannot say that it was.

17 Q. Can you say that you ever thought about it at all in 1838?

A. I was well acquainted with it.

18 Q. I understand that. Can you say now that you ever undertook, in 1838, to make an estimate in your own mind as to the height of the bed of the island chute above low-water mark?
157 A. Oh, well, now I cannot do that. I can say to you, gentlemen, that when the water was low, or what might be called a good stage in the river, that the island chute was dry—that is, there was holes with water in them there; but that I ever made a regular estimate on any occasion as to that I cannot say that. I have crossed it, I expect, a hundred times on foot; I have no doubt of it.

19 Q. When did you first undertake to determine, in your own mind, the height of the island chute or the bed of the island chute above low-water mark?

A. When I lived there.

20 Q. Now, precisely, when was that?

A. That was in 1838; I lived there in 1838.

21 Q. Then you undertook to make an estimate?

A. I could not help but do that, because I was right there and seen the water.

22 Q. What was your estimate at that time?

A. I always wondered how it got to be Kentucky; I never could see into that.

23 Q. You are not answering my question. The question was, what was your estimate at that time?

A. Of the height of it?

25 Q. Yes, sir.

A. I cannot answer that question any better than I did. I told you before that when the water was a good stage in the river for steamboats to run, of any size, they had no water in the island
158 chute at that time; they had no water in that chute then at all.

26 Q. None at all?

A. It would hold water, but there was no current. You could not go up or down in a skiff or canoe. It would hold water there all the time. There is now I expect; I don't know. I have not seen the thing lately, but I would not be surprised if there was.

27 Q. The bed of the chute has changed very much in your recollection, has it not?

A. It certainly has.

28 Q. There were what were called second banks along the chute, were there not?

A. Yes, sir. In places there was a second bank and in places not; some places were lower, and then some places it comes right up to it.

29 Q. Those second banks have in great measure disappeared and washed down and gone out into the original chute?

A. They have been filling up all the time until now. It would be difficult to find it starting from here up. You could not do it unless somebody that had been along it would show you where it was.

30 Q. Those second banks on either side of the chute have been cultivated?

A. Yes, sir; cultivated now, and the very bottom of it is cultivated in some places.

31 Q. And they have washed away and settled down into
159 the bed of the chute?

A. There is no trouble crossing it now at all; they have a crosing right along there.

32 Q. How wide was the chute at the upper end, from the first bank to the first bank?

A. When the river was up?

33 Q. No, sir; whether it was up or down, the bank was there still.

A. Oh, when it was down it was not there, but when it was up——

34 Q. I am not speaking about the breadth of the water. I am speaking about the distance from the first bank over here to the first bank over there.

A. It depends on how high the river was.

35 Q. The banks were still there, were they not, no matter how high the river was?

A. Yes, some; not much; not at the upper end. The banks show more down this way than they do up above.

36 Q. Then lower down this way how wide was the chute from first bank to first bank?

A. Well, as wide as the street, and wider, too, I reckon.

37 Q. Is not the present slough between the second banks as wide as the street, and wider?

A. Well, I don't know. I know what you are getting at, but I cannot hardly answer that exactly. It is a regular bed stream.

160 You know when the water would commence to run up above and run down it would run fast—like a mill stream; then when it broke in above it run fast, so that there would be water down below when there would be none above, hardly.

And further deponent saith not.

(Signature waived by agreement.)

Mr. McDONALD: I will pass these papers over to the notary to attach to the testimony. It is stipulated that these are to be taken in lieu of the originals. They may be marked as Exhibit A and Exhibit B.

Gov. KNOTT: All objections to the papers marked Exhibit A and Exhibit B, on account of their being mere copies, are waived; other exceptions, if any, being reserved.

Mr. McDONALD: That is right.

The papers above referred to being in the words and figures following, to wit:

161 (EXHIBIT A.)

I hereby certify that the Library of Congress contains a copy of a work entitled A Journey in North America; containing a survey of the countries watered by the Mississippi, Ohio, Missouri, and other affluing rivers, with exact observations on the course and soundings of these rivers, and on the towns, villages, hamlets, and farms of that part of the new world; followed by philosophical, political, military, and commercial remarks, and by a projected line of frontiers and general limits, illustrated by 36 maps, plans, views, and divers cuts, by Victor Collot, late general in the French service and Governor of Guadeloupe.

Paris: Printed for Arthus Bertrand, bookseller, No. 23 Rue Hautefeuille. 1826.

And I do further certify that said book has been in the Library of Congress more than 20 years past, having been acquired in the year 1866; and that in the preface of said work it is stated that the whole edition for circulation was three hundred copies in French and one hundred copies in English, and that "all the rest have been destroyed in a view to give more value to this important work."

162 And I further certify that it appears from the author's

statement in said work that General Collot and General Warin, his associate in the explorations of the Ohio, etc., left Philadelphia on the 21st of March, A. D. 1796, and reached the Monongahela after fourteen days' march, and completed his surveys down to Louisiana during the same year (1796), remaining at New Orleans until November 1, 1796.

And I further certify that on pages 169 and 170 of said book are found the following quoted passages, viz: "Green river, one of the great branches of the Ohio, is four hundred yards wide at its mouth, and is navigable one hundred and fifty miles for barges drawing three feet of water. * * * Immediately after passing Green river we found two islands opposite to each other, one of which was nearly three miles long. One of these islands only is noted in the charts; the other has been entirely forgotten. The channel on the right, between the largest of these islands and the land, is dry during the summer; that in the middle is choked up with drift-wood and sand banks. We took the channel on the left, and kept as close as possible to the bank, where we found fourteen, fifteen, and eighteen feet of water.

"The appearance of the country after passing Green river
163 is the same—low swampy lands, mixed with sand and gravel."

In witness whereof I have hereunto set my hand this 7th day of July, A. D. 1888.

AINSWORTH R. SPOFFORD,
Librarian of Congress.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss:*

On this 7th day of July, A. D. 1888, personally appeared before me A. R. Spofford, whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein set forth.

Witness my hand and notarial seal the day and date above written.

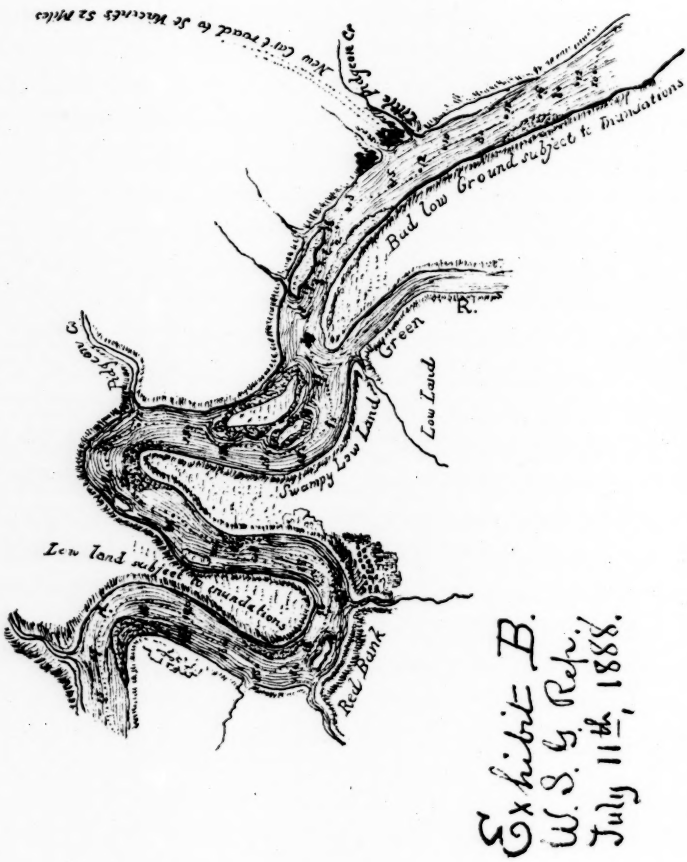
[SEAL.] CHARLES B. BEALL,
Notary Public.

164 (EXHIBIT B.)

I hereby certify that the map or sketch hereto attached is a true copy, made by tracing, of the original map contained in the atlas of Victor Collot, deposited in the Library of Congress, the title of said atlas being as follows:

"A journey in North America, containing a survey of the countries watered by the Mississippi, Ohio, Missouri, and other affluing rivers, with exact observations on the course and soundings of these rivers, and on the towns, villages, hamlets, and farms of that part of the new world, followed by philosophical, political, and commercial remarks and by a projected line of the frontiers and general limits, illustrated by 36 maps, plans, views, and divers cuts, by

Exhibit B.


New Cart road to St Vincents 52 Miles
Little Pidgeon Cr
Bad low Ground subject to Inundations
Green R.
Low Land
Swampy Low Land
Pidgeon Cr
Low land subject to inundations
Red Bank
Exhibit B.
W. S. G. Rep.
July 11th, 1888.

B

Exhibit A.

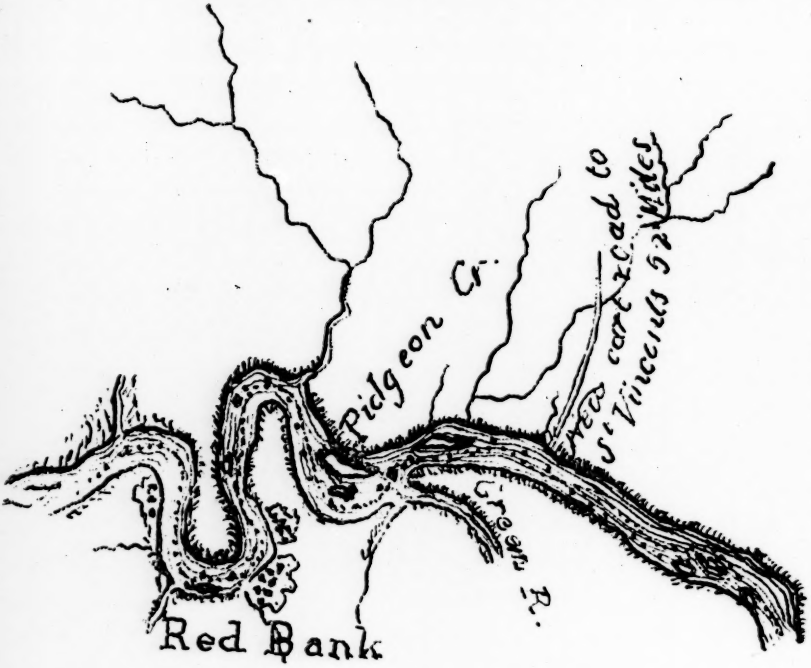


Exhibit A.
W. S. G., Rep.
July 11th 1888.

Victor Collot, late general in the French service, governor of Guadeloupe.

"Atlas. Paris. Sold by Arthus Bertrand, book-seller, No. 23 Hautefeuille street. 1826."

165 And I do further certify that the sketch or tracing hereto annexed, marked A, is a true copy from Map No. 2, in said work, entitled "General map of the course of the Ohio from its source to its junction with the Mississippi," and that the sketch or tracing marked B is a true copy from Map No. 11, in said atlas, entitled "A general map of the river Ohio, plate the fourth;" and I do further certify that said atlas of maps was published at Paris by A. Bertrand in the year 1826, although it appears from the text of the work that General Collot (associated with General Warin, a French officer) made the surveys represented in the maps and described in the texts in the year 1796. I further certify that the atlas of Collot has been upwards of twenty years in this library, having been acquired in 1866.

In witness whereof I have hereunto set my hand this 7th day of July, A. D. 1888.

AINSWORTH R. SPOFFORD,
Librarian of Congress.

DIST. OF COLUMBIA,
City of Washington, } *ss:*

On this 7th day of July, A. D. 1888, personally appeared before me A. R. Spofford, whose name is subscribed to the foregoing
166 instrument, and acknowledged that he executed the same for the purposes therein set forth.

Witness my hand and notarial seal the day and date above written.

CHAS. B. BEALL,
[SEAL.] *Notary Public.*

(Here follow diagrams marked Exhibits A and B.)

167 The said JAMES D. SAUNDERS, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.
A. James D. Saunders.
2 Q. What is your age and present residence?
A. Nearly thirty-five years old; I live in Evansville.
3 Q. What is your occupation at present?
A. Civil engineer and surveyor.
4 Q. What has been your previous occupation; how long have you been a surveyor?

A. I was county surveyor here for four years, from 1876 up to 1880, and city engineer of Evansville from 1880 to the spring of 1887, and am still in the surveying business.

5 Q. In your occupation have you done work which has made you familiar with this county?

A. Yes, sir.

6 Q. Have you ever made a plat or survey of the land in the vicinity, and including Green River Island, so called?

A. Yes, sir; I made a survey of the island.

7 Q. Have you made a plat or map of the land, including Green River Island, in this county?

168 A. I have.

8 Q. You may produce the map that you made.

A. Here it is. (Producing map.)

Mr. SNOW: We offer this map in evidence.

The map was admitted in evidence and marked Exhibit C, July 11th, 1888, W. S. G., notary, for identification.

(Here follows diagram marked Exhibit C.)

9 Q. At what time were the surveys in this plat or map made by you?

A. Well, within the last two or three weeks; maybe a little longer; it might be four weeks, or part of it, since I started it.

10 Q. What is the scale?

A. Four chains to the inch.

11 Q. Did you make on this map cross-sections at any points showing elevations?

A. Yes, sir; I made fourteen cross-sections; some of them did not go all the way across, on account of the brush and stuff that has grown up in the bayou, but just went down the bayou; didn't go up on the other side. I marked the numbers all on there to correspond with each of the cross-sections.

12 Q. The cross-sections to which you refer are the cross-sections of the bayou; you made no other cross-sections?

A. No, sir; none except the bayou.

169 13 Q. Have you ever made plats of cross-sections showing in detail the elevation at the points marked as cross-sections of the bayou on the large map just produced?

A. Yes, sir; I have, the last week.

14 Q. You may produce those maps showing the cross-sections in detail.

A. Here they are (producing).

Mr. SNOW: We will introduce these in evidence. The said maps were admitted in evidence and marked, respectively, Exhibit D and Exhibit E, July 11th, 1888, W. S. G., notary, for identification.

(Here follow diagrams marked Exhibits D & E.)

Exhibit C.

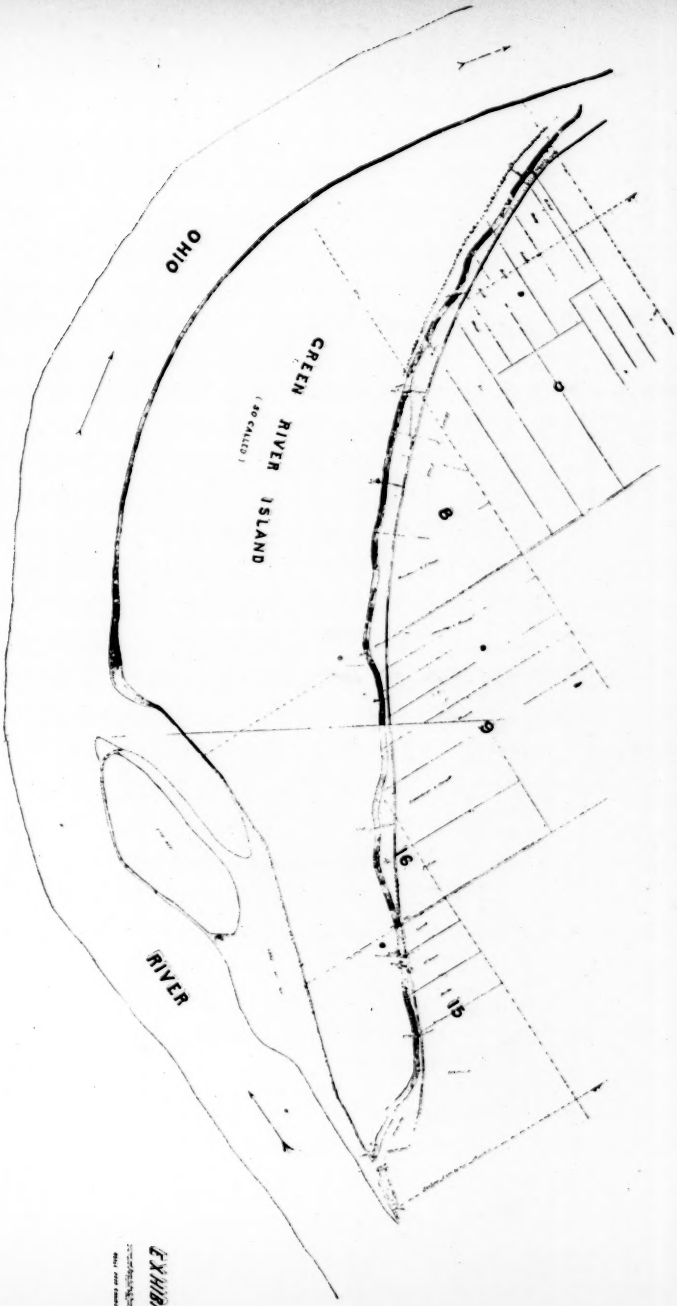


Exhibit D.

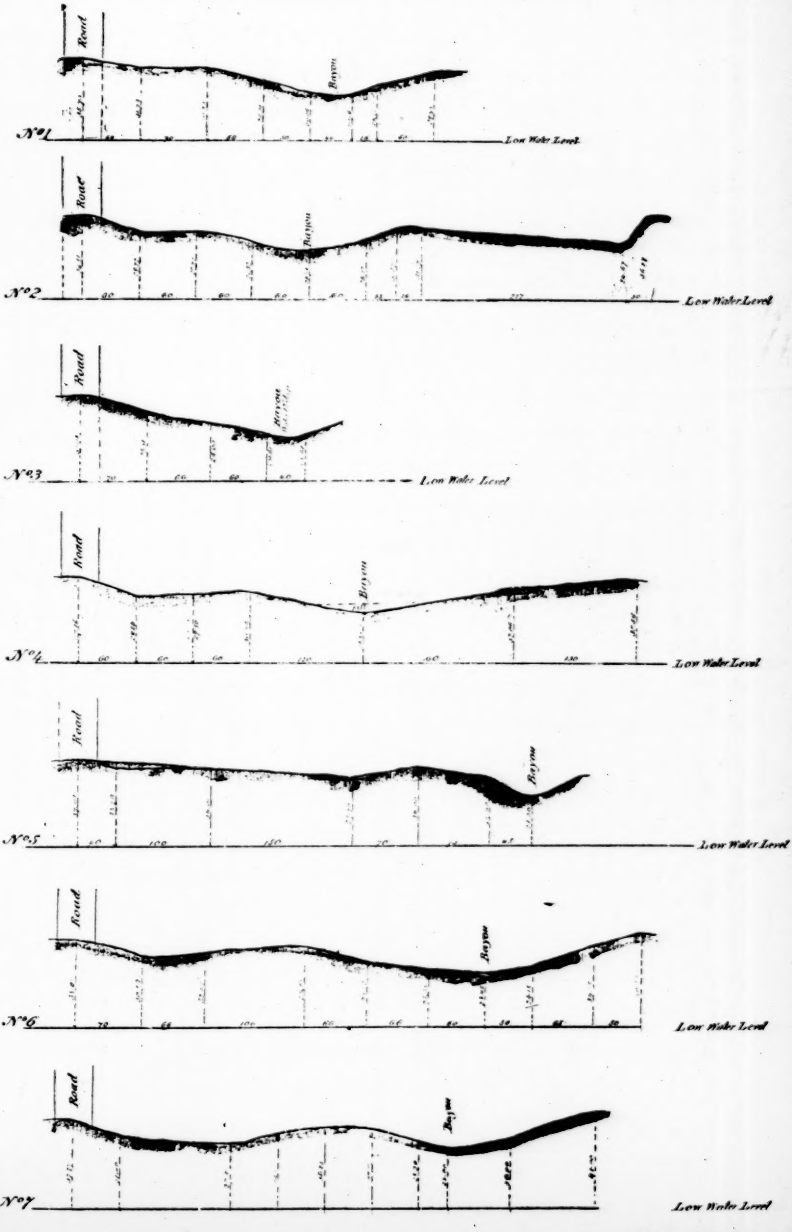


EXHIBIT D.

Exhibit E.

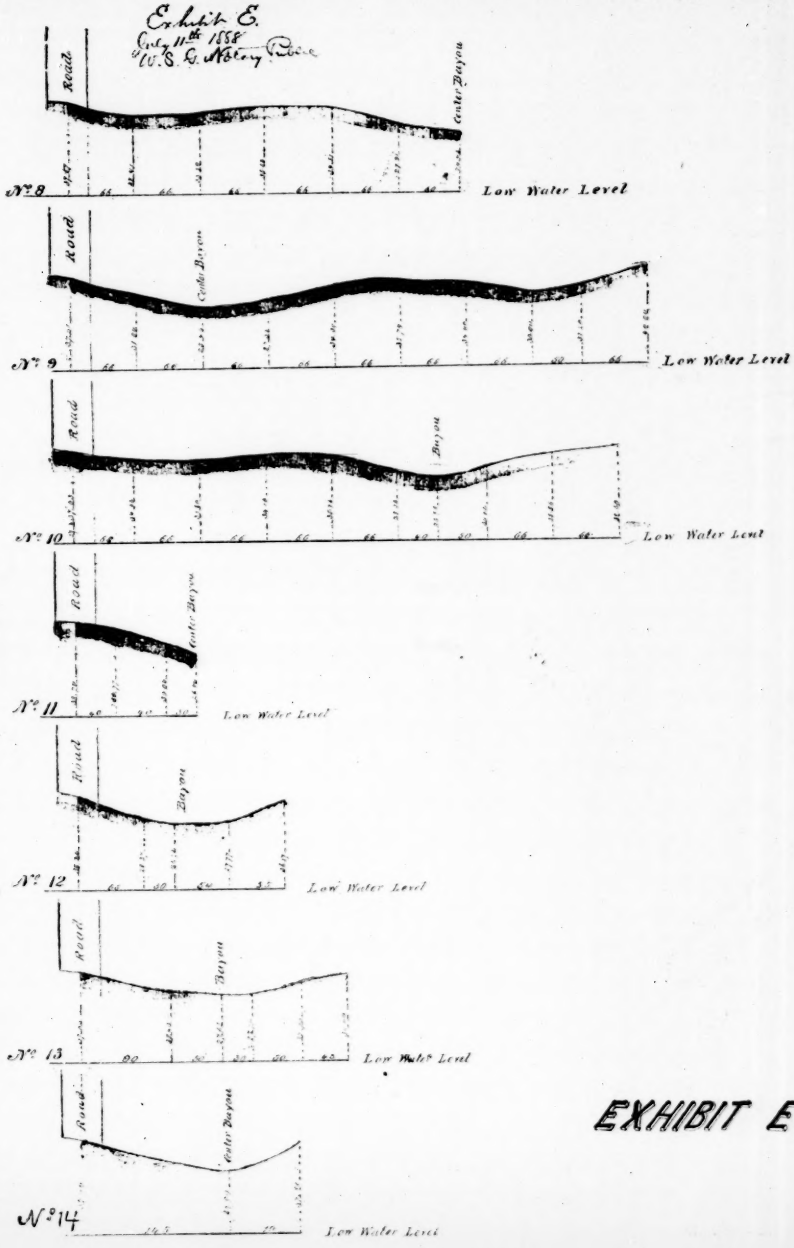


EXHIBIT E.

15 Q. In the maps called Exhibits D and C, showing cross-sections of the bayou in detail, what is your base line?

A. Low-water mark is the base line; the low-water mark of 1867.

16 Q. How was the low-water mark of 1867 established?

A. That is zero on the Government gauge at this point in the river here. The gauge was put there after 1867 and was placed so as to correspond with the low water of 1867.

17 Q. Is the low-water mark to which you refer a low-water
170 mark established under the authority of the Government as the low-water mark in the Ohio river at present?

A. Yes, sir; put there by the United States Government.

18 Q. On the map showing the cross-sections of the bayou in detail, Exhibits D and E, you may specify at what points on the bayou the cross-sections were made, and state the elevations at the lowest points of the bayou channel of each cross-section with reference to the other.

A. Cross-section marked No. 1 is on the north line of section six at the point where the controversy about the bayou commences, on the lower end. The center of the road there is thirty-five feet and 73-hundredths above the low-water mark. The center of the bayou at the same line is 20 and 56-hundredths—that is, down at this end. At No. 2—that is where there is a road across onto the island from the main land; the road on the north side of the bayou—the level of the country road is 36 — $\frac{51}{100}$; the level of the bayou at the road crossing is 21 feet and $\frac{71}{100}$, and then back on the other bank—the high bank on the other side—the level is 36 feet and $\frac{27}{100}$.

19 Q. On the other side—is that the island side?

A. Yes, sir; the island side. No. 3, the level of the road is 37 feet and $\frac{41}{100}$; the level of the bayou is 20 feet and $\frac{61}{100}$. No 4—that is another road crossing on to the island; the level of the
171 road is 37 and $\frac{16}{100}$; the level of the bottom of the bayou is 21 feet and $\frac{81}{100}$. There is a fill across the road; the road is an embankment across there between three and four feet high. The level of the bottom of the bayou is 21 feet and $\frac{81}{100}$, and the bank on the other side, on the island side, is 35 and fifty-six hundredths. At No. 5 the center of the road is 37 feet and $\frac{41}{100}$. The bayou is 21 feet and $\frac{30}{100}$. At No. 6 the center of the road is 38 feet and $\frac{2}{100}$, and the bayou is 23 feet and $\frac{48}{100}$; that is also at a road crossing; and the top of the bank on the other side, on top of the high ridge, is 40 feet and $\frac{23}{100}$.

20 Q. You call the other side the island side?

A. Yes, sir. No. 7 is also a road crossing. The center of the road is 37 feet and $\frac{77}{100}$. The center of the bayou is 25 feet and the top of the road on the island side is 41 feet. No. 8 the center of the road is 37 feet and $\frac{67}{100}$; the center of the bayou is 24 feet and $\frac{45}{100}$. No. 9 is a road crossing; it crosses the bayou. The center of the road is 37 feet and $\frac{61}{100}$, the center of the bayou is 25 feet and $\frac{46}{100}$, and the ridge on the island side is 40 feet. No. 10; that is also a road crossing; the center of the road is 37 feet and $\frac{63}{100}$; the center of the bayou is 25 feet and $\frac{96}{100}$. At No. 11 the center of the road is 38 feet and $\frac{70}{100}$; the center of the bayou is 26 feet. No. 12, the

172 center of the road is 38 feet and $\frac{24}{100}$, the center of the bayou 26 feet and $\frac{72}{100}$, and the bank on the island side is 36 feet and $\frac{17}{100}$. No. 13, the center of the road is 37 feet and $\frac{63}{100}$, the center of the bayou is 27 feet and $\frac{68}{100}$, and the ridge on the island side is 36 feet. No. 14, the center of the road is 39 feet, the center of the bayou 25 feet, the island side 37 feet and $\frac{81}{100}$. Right at the head of the bayou, on the same line as this road is extended out, the level of the center of the bayou there is 29 feet.

21 Q. You say this road—identify it in some way.

A. From the county road; on the line of the county road.

22 Q. Is that road named on this map?

A. It is just named the county road. On that line it is 29 feet. From the point where it is 29 feet it slopes down to the bank.

23 Q. Near what cross-section is it?

A. It is marked on the map right near the mouth of the bayou.

24 Q. It is marked on the map—continuation of the road where it strikes the river at the extreme end of the island.

A. It is 29 feet in the center.

25 Q. How many road crossings did you find crossing from
173 the road across the bayou to the island?

A. Seven.

26 Q. To what does the word "road" refer in cross-section maps marked Exhibits D and E at the left?

A. It refers to the county road running along the bayou on the north side nearly parallel with it.

27 Q. Is the county road referred to in the maps marked Exhibits C, D, and E on an average level with the surrounding country or not?

A. As a general thing it is a little higher; there is ridges all the way across back for probably two miles; there is a series of ridges and small sloughs.

28 Q. How much of the Green River Island bayou has to your knowledge been at any time under cultivation?

A. Well, at the upper end of the island it is in cultivation for a short distance, probably two or three hundred yards, and from there down for about a mile it is grown up with willows—willows and young cottonwoods; that is about 40 feet wide, I think, and the ground is cultivated right down to those willows; and down at the lower end it has been in cultivation all the way across from the first road crossing down to the line where it commences; it has been in corn the last year.

29 Q. Have you ever at any time previous to this made a survey of the same country, the same territory shown on these maps?

174 A. In 1876 I was county surveyor at that time and father was civil engineer; we both made a survey of the bayou; nothing in regard to the island or the earth; we made a survey of the bayou.

30 Q. What did that survey show as respects the condition of the bayou in relation to its present condition?

A. Well, it was about the same condition then; very little change that I can see in it from that time until now. We made that sur-

vey in November and December, and the greater part of the bayou we walked in it, except where the holes are and where they have always been since I recollect the bayou.

31 Q. Was the place where you walked in or out of the actual bayou channel?

A. Why, we walked in the bayou channel, except the places where the ponds were.

32 Q. Are you familiar, by reason of your examination in making this survey, or otherwise, with the nature of the country lying between the Green River Island, so called—lying to the north of Green River Island?

A. Yes, sir; I have made several ditches into ponds up there when I was county surveyor.

33 Q. What is the nature of the land to the north of Green River Island?

A. Well, it is now the same nature of land as the island;
175 it lays in sloughs running pretty nearly parallel with this bayou—about parallel with the course of the river.

34 Q. For how far does this condition of things extend north of Green River Island?

A. Down near the mouth of the bayou it is not so very far across; probably half a mile. When you get up near the upper end it is two miles to the high bank—about that distance.

35 Q. How far west does this condition of the country extend in the neighborhood of Green River Island?

A. Well, the low ground extends up above the mouth of the island for nearly three miles, and then the high bank gets out on the river there.

36 Q. How far does the country extend in this same condition westwardly toward the foot of the island?

A. Well, it narrows down, but it is overflowed bottom clear down to the city—to the water works.

37 Q. Is this flat country through its whole east and west extent in the same condition with respect to sloughs as you said it was north of Green River Island?

A. Well, all those sloughs that are up in the north side there head out in one slough down below the mouth of this bayou. They terminate in what is called Bee slough, and all branch into that and come out in one mouth in the river.

38 Q. What is the general direction of sloughs through this
176 flat country north of Green River Island with relation to the Green River Island bayou?

A. Well, pretty nearly parallel with it.

39 Q. How do the cross-sections shown on the maps marked Exhibits D and E compare as respects the general elevations with the elevations of the land in the bayou channel between the points at which the cross-sections were taken?

A. Well, it is about the same. The road is nearly level all the way through. I found very little difference in the bayou. At only one place—that is between two of them, between the two roads—there is a point that is made at the lower place; the crossing is higher

than the general average. It is kind of filled up there, and there is water back of it. The crossing level is about twenty-five feet, and the water comes right up near to the crossing, and there is about four feet of water in the deepest place. It starts in right close to the crossing and runs until it is about four feet deep in the lowest place.

40 Q. What is the character of the surface of the ground of Green River Island, so called, between the Green River Island bayou and the river?

A. About the same character as the other ground—depressions in it all the way across, and ridges.

41 Q. Are there any depressions on Green River Island in the nature of sloughs which contain water?

177 A. Well, I don't think there is any water in any of them now; no, sir.

42 Q. What is the general direction of the swales or depressions on Green River Island with relation to Green River Island bayou?

A. Nearly parallel with the bayou.

43 Q. How far is the second island—the tow-head—at present from the main Green River Island, and what is its condition in relation to Green River Island at present?

A. It is joined to Green River Island by the gravel bar and sand bar.

44 Q. During how long a period of the year is it so joined with the main Green River Island?

A. Well, it is joined until the water gets—it has got to get over twelve feet high, probably fifteen; I don't know exactly, but I know it has got to be over twelve to disconnect the two islands.

45 Q. Have you ever made any examination of the growth and the timber in Green River Island bayou; and, if so, what were the results of that examination?

A. Well, we found a great many trees—very large ones—along the bayou—along the north side; most of them are close to the road. Here, in section No. 12, there are cotton-woods.

46 Q. Cross-section you mean?

178 A. Yes, sir; cross-section No. 12. There are three cotton-woods on the north side of the island, about four feet in diameter, and then on the south side there are sycamores standing very thick along the road down there.

46 Q. Along the county road?

A. Along the county road and right at the edge of the bayou. At that point the bayou slopes right from the road into the bayou, and the distance between those trees is 123 feet.

47 Q. The distance between the trees across the bayous, do you mean?

A. Yes, sir.

48 Q. Now, are the small black discs which you have marked on the large map called Exhibit C intended to represent the trees which grow in or near the bayou?

A. Yes, sir; those are the trees. We noted that there are other

trees in there and probably a good many stumps that we could not see on account of the corn. I dug at the root of some of these trees.

49 Q. Near what cross-sections did you make those examinations by digging?

A. Near twelve and thirteen we made some, and found that the roots of one of the large cotton-woods near section No. 13—the large roots of the tree—were about a foot below the ground.

50 Q. What was the probable diameter of the tree?

179 A. The tree would be about four feet in diameter.

51 Q. What is the general diameter of the trees marked on that map near cross-sections No. 12 and 13 on map C?

A. From three feet and a half to, some of them, four feet and a half.

52 Q. Where do these trees—where are these trees situated with respect to the sides of the bayou?

A. They are right on the side of the bayou, on the slope.

53 Q. Do any of them extend into the bayou?

A. Well, one large cotton-wood leans right over the bayou.

54 Q. Did you observe any other tree growing in or near the bayou or stumps; and, if so, where were they?

A. Well, a small tree that I examined right on the edge of where the channel of the bayou is now, about 30 feet from the center of it—a cotton-wood tree.

55 Q. Near what cross-section is the tree to which you refer?

A. Oh, the tree is down here near cross-section No. 1, and it is marked B on the map.

56 Q. How does that tree stand with relation to the bayou channel?

A. It must have been in the bayou channel if it was any wider than 60 feet; it is about 30 feet from the center of the bayou now.

57 Q. What was the diameter of that tree?

180 A. Fifteen inches.

58 Q. What kind of a tree is it?

A. Cotton-wood, and the roots of that tree, the main root of the tree, a four-inch root that we dug down to, is about eight inches below the ground.

59 Q. Were there any other trees that you observed and examined in or near the bayou channel?

A. Yes, sir; in between cross-section 1 and cross-section 2 we examined a maple that was dead—evidently had been dead some time; that is about half way between the road and the center of the bayou.

60 Q. About how many feet at that point from the center of the bayou?

A. Well, it is about 60 feet from the bayou.

61 Q. What was the diameter of that tree?

A. That tree was two and a half feet. We struck a small root on that tree at one foot below the ground, and large roots, that had pretty nearly rotted away, at two feet.

62 Q. Did you make an examination of any other trees in or near the bayou channel; and, if so, where were they?

A. We made an examination of the tree that stands right in the mouth, where the depression is, there at the head of the island.

63 Q. How is that tree marked on the map called Exhibit C?

A. It is marked by a black mark right at the head of the bayou.

181 64 Q. Near what cross-section?

A. It is above the cross-section here.

65 Q. What is the diameter of this tree?

A. Four and a half feet.

66 Q. Did you make an examination to see at what depth the roots of this tree were?

A. Yes, sir; it was five feet down from the top of the ground to the big roots of that tree.

67 Q. Were there any other trees of which you made an examination?

A. No; I believe that is all.

68 Q. What is the character of the land near the point marked on the map called Exhibit C as Buck Island?

A. That is a high island that rises to the level of the general ground and has got a slight depression all around it, running in near the mouth of the bayou. The depression is nearly parallel with the road and runs out nearly to the road and comes into the bayou here (indicating)—a depression of about five feet.

69 Q. What is the height of the depression surrounding the piece of land marked as Buck Island, on map C, above low-water mark?

A. Well, it is about 28 feet.

70 Q. What is the black disk marked in the pencil mark showing the depression behind Buck Island?

182 A. Along about close to the road it is only about five feet below the road, and the road is about 38 feet high. When it comes down into the main channel of the bayou it comes down to about the same level of the bayou.

71 Q. What is the elevation of the top surface of the piece of land marked Buck Island, on map C, with relation to the surrounding country?

A. The same elevation as the other ground.

72 Q. Now, what is this black disk marked in the line of depression—channel depression—in the rear of the piece of land marked on map C as Buck Island?

A. It is a sycamore tree.

73 Q. What is the diameter of that sycamore tree at that point?

A. It is about three feet. It grows right in the center of the depression.

74 Q. Did you make any examination to show how far below the ground the roots of that sycamore tree were?

A. No, sir; we did not make any examination there.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

75 Q. At whose instance and for what purpose did you and your father make a survey in 1876?

A. At the instance of Dr. Kennedy and some of the parties that were interested in the bayou controversy.

76 Q. When did you make that last survey?

183 A. Well, I finished it last week.

77 Q. And for what purpose did you make that?

A. For the purpose of showing the location of the bayou and the island.

78 Q. In this controversy?

A. Yes, sir.

Senator McDONALD: He made it by our instance.

79 Q. When was that water-gauge established from which you made your base line?

A. That was established some time after 1867; possibly it might have been a couple of years after; I don't know exactly about that.

80 Q. By whom?

A. By the United States Government—by the engineering department.

81 Q. Were you present when it was placed there?

A. No, sir; I was not there when it was placed.

82 Q. Do you know what officer placed it there?

A. No, sir.

83 Q. Do you know under what authority he placed it there?

A. I know that it is the Government gauge; it is there in the charge of the United States Government.

84 Q. It was placed there after 1867?

A. Yes, sir.

85 Q. I see a spot marked on this map C in yellow color.

A. That represents sand, you see—a sand and gravel bar.

184 86 Q. Now, coming up to the extreme corner of that sand and gravel, what does the space between the yellow and white represent?

A. The slope of the bank from the top of the bank down toward the sand bar.

87 Q. Does it slope from the road down to the sand bar?

A. No, sir; it is nearly level from the road out to the top of the bank.

88 Q. How far is it from the road out to the top of the bank?

A. 60 feet at the corner when we were surveying.

89 Q. And those black marks indicate the slope of the bank down to the sand bar?

A. Yes, sir.

90 Q. You spoke of some sloughs lying between the Green River Island chute and the high land back in Indiana; how far is it from the chute to the nearest one of those sloughs?

A. Well, there are several of them; they don't contain water; they are just a series of depressions all along. The first, in some places——

91 Q. I am speaking of those that contain water.

A. There is none right at the island that contain water.

92 Q. Now, my question is, how far from the island chute to the nearest one of those sloughs which contain water?

A. Well, it is probably a mile back to where the water is
185 now. Nearly all those sloughs have been drained by ditches.

93 Q. Those sloughs make into the Ohio river below the city of Evansville, do they?

A. No, sir; above the city of Evansville.

94 Q. They derive their water from the backwater of the river?

A. And the drainage of the ground and the headwater that comes across in high water.

95 Q. But most all that country is covered in very high water?

A. Yes, sir; all of it.

96 Q. And in high water the current makes back towards these sloughs?

A. When the river starts to rising it goes back from the mouth and up the slough until it gets high enough to get over the banks up above, and then it comes down the other way.

97 Q. So that all the water in those sloughs except the surface drainage is backwater from below?

A. And this water that has been left from high water; yes, sir; except the surface drainage. I want to say now in section 9 there is a slough there that contains water that is nearly a mile back from the bayou—probably three-quarters of a mile—that contains water at almost all seasons of the year. It is a place they call the lake up there. It is in section marked 9.

186 98 Q. That has no outlet to the river at all except in high water?

A. Except in high water. The slough is not as low as the pond.

Re-examination.

Questions by Mr. SNOW:

99 Q. What is the name of that slough?

A. I don't know that they have got any name. They may call it some name up there, but I never heard any particular name for it.

100 Q. You spoke in your previous examination—in your testimony—of Bee slough. Where is Bee slough?

A. Bee slough is the one that comes down and has its outlet near the water-works. It is north of this channel.

101 Q. Just above the city of Evansville?

A. Yes, sir; just above the city of Evansville.

102 Q. How far north at its mouth is it of the bayou channel?

A. At the foot of the island it is probably about half a mile over to Bee slough.

103 Q. Where does Bee slough begin?

A. It is pretty hard to tell. It runs a series of ponds all the way along there up for several miles.

104 Q. At what point does the water enter Bee slough at times of high water, if it enters it at all?

A. Well, it enters from up about two miles and a half above the head of this island.

187 105 Q. From that point two and a half — above the head of Green River Island, so called, what is the general course of Bee slough in relation to Green River Island bayou?

A. Very nearly parallel. It just runs down parallel with the river—not much out of the way.

106 Q. Does it require more or less water in the river above low-water mark for the water to flow into Bee slough than into the Green River Island bayou?

A. I don't think there is any difference in it particularly. I think it is about the same.

I would like to put the names of the property-holders on this map and mark it Green River Island, if you want it marked that way, or whatever title you want put on the map, before you take it away.

Mr. SNOW: I suppose there will be no objection to that.

Questions by Mr. KNOTT:

107 Q. State, in this connection, whether the survey of Green River Island, of which this is a map, was made by you at the instance of any of the property-holders on that island.

A. No, sir; it was not.

108 Q. And not at the request of any property-holder on this island? State who requested you to make this map and survey.

188 A. Mr. Snow, one of the attorneys of the State of Indiana.

And further deponent saith not.

(Signature waived by agreement.)

Dr. A. J. PHINNEY, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.

A. A. J. Phinney.

2 Q. What is your present residence?

A. Muncie, Indiana.

3 Q. And your age?

A. Nearly thirty-eight.

4 Q. What is your occupation at present, and what has it been in the past?

A. I am a physician. In connection with my business as a physician I have for the last eighteen years given some attention to the study of geology. During the last eight years I have been connected, off and on, with the State geological survey, and recently—within the last year—with the United States Geological Survey.

189 5 Q. What have been your duties in connection with the United States and State geological surveys?

A. In the State geological surveys I have been on detail work in the form of surveys in different counties; in the United States Geological Survey my attention has been given to the structure of the Indiana gas field and of the whole State at large—more especially to the Indiana gas field.

6 Q. What do you mean by detail work?

A. In making a geological survey of the county we take everything in connection that the county may show; it embraces everything. But in special work my duties in connection with the United States survey has been given more particularly to gas developments.

7 Q. Have you ever made an examination of the land on the Indiana side of the Ohio river in the neighborhood of Green River Island for the purpose of determining its geological formation, or have you made examination of any portion of the land in that neighborhood?

A. I was over a portion of the ground yesterday and the day before—Monday and Tuesday.

8 Q. You may give in detail the results of your observations relating to the character of the land in the vicinity of Green River Island.

A. The first thing in starting out for the making of our investigations we followed the road, starting a little north here—the
190 road north of the bayou, the north bayou, the one that now has water in it. The high bank, as I understand it, and as I was informed by parties and by Mr. Saunders, is above the high-water mark. We followed the road along that high bank in order to gain an idea of the character of the portion above the flood plain. At some point two miles or such a matter above the city we crossed the plain lying between the cypress swamp and the bayou known as Green River Island bayou. We also drove down, circling around near to tow-head island, coming out a little above the tow-head island on one of the roads. My impression, gained from the examination I made of that tract of land, was that the high land, the high banks north of the old cypress swamp, represented the original level of the Ohio River valley at the close of the glacial epoch.

9 Q. Where is this cypress swamp, with relation to the Green River Island and the city of Evansville, and where are high banks to which you refer?

A. This swamp or bayou lies, I should judge, about two miles, or in the neighborhood of two miles, north of Green River Island bayou. The high banks border it on the north. It lies parallel with, or nearly parallel with, the Green River bayou. However, they are closer together at the west end. They are nearer the
191 city limits on the south than, I should judge, at the west end. The impression that I gained from an examination of this tract of territory lying south of the high hills and the bluff north of the cypress swamp was that this whole section was the flood plain of the Ohio river.

10 Q. North or south of the cypress swamp?

A. South of the cypress swamp. I noticed little sloughs or depressions along at intervals, not only between the cypress swamp and bayou, but also as far south as we went on Green River Island. These depressions all seemed to run nearly parallel with the main channel.

11 Q. Have you ever made any examination of the Green River Island bayou, so called, and if you made any such examination what were the results of it?

A. We made an examination of Green River bayou yesterday or Monday and Tuesday. My impression or my opinion, from the examination that I have made of that bayou, is that it is simply an overflow channel—an escape for the waters of the Ohio river at high water.

12 Q. From what do you draw this conclusion?

A. The presence of trees on both sides of the bayou—large trees, ranging from two and a half to probably five feet and a half in diameter, situated close to the bayou—and the fact that an examination showed that the roots of those trees were not covered
192 only to a superficial depth, perhaps a foot, would show that that channel had never been large; it would be evidence that during the lifetime of those trees the channel had been a small channel. Had this bayou been a channel for the Ohio river at low water a stream the size of the Ohio would have cut that channel to a much greater width and also a greater depth. The presence of those trees upon the sides of the bayou will show not only a narrow channel, but they would show that there had been no continuous flow of water there during the lifetime of those trees. The one tree marked with a little black dot, in the center or a little south of the center of the bayou, near its head, on map C.

13 Q. You mean at the head of the bayou channel, on map C?

A. Yes, sir; the Green River bayou channel as shown on map C; that would show that the channel at that point had not been filled with water running continuously for a period covering the lifetime of the tree.

14 Q. How old was that tree, in your opinion?

A. That tree I would judge to be four and a half feet in diameter and covered a period of one hundred and fifty years at least—probably a greater time than that, a longer time than that—possibly two hundred years, and perhaps more than that.

193 15 Q. Did you note the age of the other trees marked on map C?

A. The trees that border the Green River bayou are most of them large. The sycamore trees are all dead, but they have been girdled; they were probably alive only a few years ago, and they are large trees. Some of those trees probably would show an age of three hundred years. They are back, many of them a little back, from the bayou, on higher ground; some of them, however, are in the depression immediately back from the higher banks adjoining the bayou, in what would be called the second bottom, or, rather, in a little depression parallel to and bordering the bayou proper.

16 Q. Are any of the trees shown on map C between the bayou channel and the county road?

A. Yes, sir: there are a good many trees and a great many stumps, large stumps, between the channel and the road. In fact, at many points the road seems to run along close to the edge of the bluff, if you call it a bluff. It slopes very gradually almost within a few feet from the road down into the first depression. There would be a little rise and then you have the bayou. At other points it slopes directly into the bayou; it runs within a hundred or a hundred and twenty feet of the bayou proper.

17 Q. At the point on map C near cross-sections No. 12 and
194 No. 13, where the trees are marked as being on both sides of the bayou, what is the distance across the bayou between those trees?

A. Well, I would not estimate the distance exceeding 120 or 130 feet. Two large poplar trees stand—well, they are really on the slope of the bayou, on the south side; they are large trees, and I should judge they were nearly five feet in diameter.

18 Q. What should you say was the age of those trees near cross-section No. 12?

A. I would not put the age of those trees at less than 200 years.

19 Q. Did you make any examination at the roots of those trees, at or close to the roots of those trees, to determine the character of any deposit about the roots?

A. We did at the roots of those large trees, both of them; they were found within one foot below the surface.

20 Q. What would that indicate?

A. It would indicate that there had been scarcely any fill at that point from the time the trees first began their existence; that the conditions that are present there now are essentially the same as those that were present when the trees began growing, years ago.

21 Q. What kind of trees did you say these were at cross-section No. 12?

A. They are poplar trees; they are cotton-woods probably;
195 I say poplar; I use the term poplar; they are cotton-wood trees; there are two species, and they are frequently called poplar; this is really the poplar tree.

22 Q. You mean to say that, generally speaking, botanically, cotton-woods and poplars are the same thing; is that what you mean?

A. Yes, sir; that is what I mean.

23 Q. The same family?

A. I have been accustomed to calling it the poplar tree; it is the species known as the liriodendron. In some sections of the country that is called poplar and in other sections the white-wood; but these are cotton-wood trees. I did not observe any of those white-woods, as they are sometimes called. It is the common poplar tree. In connection with the bayou proper, immediately bordering the edge of the bayou, are willows and poplars that would probably indicate an age of thirty or forty years. At some point near the western end of the bayou we made an excavation at the roots of one of the trees

and only found about a foot of soil. That tree stood within thirty feet, about, of the center of the bayou.

24 Q. How much greater is the distance from the head to the mouth of the river by way of the channel, marked Ohio river on map C, than it is by the Green River Island bayou?

196 A. I should judge it would lie between two-thirds and three-fourths of the distance.

25 Q. Would or would not, therefore, the bayou channel, if it had ever existed to as low a depth as low-water mark, have had a greater or less fall than the main channel in the main river, marked as Ohio river on map C?

A. It would have a greater fall.

26 Q. What would have been the tendency of that?

A. To cut this channel deeper.

27 Q. And it would also have had a tendency to cut it wider?

A. Yes, sir.

28 Q. Would it have been possible for a channel in the Ohio river of the width indicated by the cotton-wood trees, near cross-section No. 12, to have flowed in a channel of that width?

A. For the Ohio river to have flowed in it?

29 Q. In a channel of the width indicated by the cotton-wood trees at cross-section No. 12.

A. No, sir; not one-fourth part of the water in the channel of the Ohio river. A very small portion of the water of the Ohio could have flowed through it.

30 Q. Would it or would it not, if it had ever been a channel of the Ohio river at low-water mark, have worked out a much wider channel than that shown by the trees at cross-section No. 12?

197 A. Yes, sir; probably five or six times as wide.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

31 Q. Doctor, I understand that it is your opinion that at the close of the glacial epoch the Ohio river ran along the bluff about two miles further into Indiana than it does now?

A. Probably, some portion of it.

32 Q. That has been a good while ago?

A. Yes, sir.

33 Q. About how long?

A. That would be rather a difficult question to answer. It could be measured by thousands of years; just how many it would be difficult to say. If you will inform me as to the number of years ago the glacial epoch closed and the upper flood plain made I will answer your question definitely.

34 Q. If I knew there had been such an epoch I might be able to give you the information you desire, but that is, like a great many other things, resting entirely in theory, and we are dealing now with facts.

A. I will answer your question as definitely as I can. It is likely that the glacial epoch proper closed in the neighborhood of 250 or

225 thousand years ago, based upon astronomical data. The high bluff north of the cypress swamp, which we will call another bayou, probably marks the limit or extension—the northward
198 extension—of the waters of the Ohio river in that direction, and between that point and some point south on the Kentucky shore the erosion that all this portion has suffered has taken place since the close of that glacial epoch. How long ago it was that it ran through that old bayou it is difficult to tell. It has been a good many thousand years ago.

Questions by Mr. SNOW:

35 Q. Which one do you refer to?

A. I mean the old one.

36 Q. Do you mean Bee slough?

A. Yes, sir; that is the name of it. It is very probable that has been a portion, at least, of the main channel of the Ohio river, but it has been a great many years ago.

37 Q. You are speaking now of Bee slough?

A. Yes, sir.

Mr. SNOW: Please refer to it as Bee slough hereafter, and then we shall keep it all straight in the testimony.

Questions by Governor KNOTT:

38 Q. What is the character of the deposit or formation through which the Green River Island chute cuts?

A. On the sides, do you mean, or what we find now on the soil?

39 Q. Yes, sir.

199 A. Well, it is a very fine clay; very fine sand mixed with it; quite a large proportion of clay—very fine. Well, there is a good deal of sand; some places there is more sand than others; towards the upper portion it contains a greater proportion of fine sand. It is very fine material.

40 Q. The upper end of the island is very much more recent than the main body of it, is it not?

A. Well, I don't know about that.

41 Q. You made borings to see about that?

A. Only at the root of that tree.

42 Q. You bored down five feet?

A. I dug down five feet. At the bottom of the boring, or at the bottom of the excavation, the tree seemed to be standing in sand. It was a very fine sand, much finer than the wash from the river. I noticed the sand that was taken out near the surface—there was a thin layer of sand—the grain was very much coarser and whiter. This is yellow sand, in which the roots of the tree were standing, that was found at a depth of about five feet; it resembled very much the yellow sand that is taken from the sand banks near the city here, and found in the high bluffs to the north of slough B.

43 Q. You mean Bee slough?

A. Yes, sir.

44 Q. You said that cotton-wood tree, in your judgment, was 200 years old.

200 A. Well, I would not place it less than that.

45 Q. Now, upon what do you base your judgment?

A. 150 to 200 years.

46 Q. Upon what do you base your judgment?

A. Well, a tree has a certain rate of growing. I base it upon the length of time required to reach a certain size.

47 Q. The cotton-wood is of a very rapid growth, is it not?

A. It is faster than some trees.

48 Q. Is it not a remarkably rapid grower?

A. Yes, sir; it is a pretty rapid grower.

49 Q. What length of time would it require for a cotton-wood tree to attain a diameter of two feet?

A. I cannot give you that exactly; I have never had an opportunity to count the rings of growth on those large trees, and the time I give I would only estimate; but I would think that the tree would at least require seventy-five years to reach a growth of two feet in diameter—from sixty to seventy-five years.

50 Q. Which is the more rapid grower, the cotton-wood or what is known as the tulip poplar?

A. I don't know. I think the cotton-wood would grow more rapidly than a tulip poplar. I am not sure about that. I never made any special examination to determine the rate of growth of either.

51 Q. Then your estimate of the age of that tree is a mere

201 guess of yours?

A. Well, it is not altogether a guess; it is simply an estimate that is liable to vary some either way.

52 Q. Well, about how much longer would it take a cotton-wood to attain two feet than it would one foot in diameter?

A. Well, perhaps nearly twice as long; about twice as long.

53 Q. Do you know whether the slough at the upper end of this island has changed its location within the memory of man?

A. Do you mean whether I would judge from the present appearances as to that fact?

54 Q. I mean whether you know it to be a fact or not?

A. No, sir; I don't know anything about it, only what persons say of it; I never examined the location before and have no knowledge of it.

Re-examination.

Questions by Mr. A. H. SNOW:

55 Q. In the growth of trees, particularly in the growth of cotton-wood trees, is it or is it not true that as the trees grow older the diameter increases at a much less rate than it does while they are younger?

A. Yes, sir.

56 Q. And in the case of a cotton-wood tree how much difference would there be in the proportion?

A. I don't know. I have not had any opportunity to determine that matter definitely.

202 57 Q. Do you know whether this tree at the head of the bayou has or has not ever been struck by lightning?

A. It has, I think.

58 Q. Would that or would it not have any tendency to diminish the rate of growth, or what would be the effect of it?

A. It might for a time. The tree at the present time, however, seems to be in a healty condition. The scar on the tree or the track has healed over pretty much; still it is visible, and you can see where the new growth has nearly met at the present time; it is not entirely healed over yet, but it shows.

59 Q. Did you observe any evidence in your examination that the channel marked on this map C as being the bayou channel was at any time ever a wider channel? Did you observe anything in the nature of terraces or outside banks which would indicate a wider channel than that marked upon map C?

A. No, sir; there was a bank south and north of the main bayou, the main channel. There would be lower channels, but those channels would seem to come into the main channel, the main bayou, as if those had been formed by an overflow of water. The ridges between those depressions would be of about the same height. There is nothing there that in my opinion corresponds to the terrace formation. In fact, the whole terrace formation, the whole flood

203 plain, is obscure; it is not plain. The most marked distinction is between the high land back of Bee slough and the plain to the south of it; but bordering the whole bayou I observed nothing that I would consider as a terrace formation proper, such as we find bordering the river.

Recross-examination.

Questions by J. Proctor Knott, Esq.:

60 Q. Suppose it had been plowed and washed in and filled up?

A. That would still make no difference; they would not be continuous even if they were at a lower level.

61 Q. So you saw no indications of terraces at all?

A. No, sir; not what I consider terraces.

62 Q. What do you consider to be a terrace?

A. In a river, in cutting the channel deeper, when standing at different levels as flood plains at varying heights, you will find a terrace that will skirt the river and be continuous for miles; and then, at a lower level, ten or fifteen or twenty feet lower, you will find another that is continuous; perhaps you will find it upon one side of the river, and then the river will go round and cut it all off, and you will find it on the other side of the river. These terraces are usually continuous. I find nothing here that I consider as corresponding to the terrace formation that is bordering on Green River Island.

204 63 Q. What you call terraces is what the common people call the second banks?

A. They form one terrace.

64 Q. So you think there never was any second bank along that slough?

A. No, sir.

Question by Mr. SNOW:

65 Q. Would there or would there not have been evidence at the present time of terraces or second banks along the line of that bayou if the bayou had ever at any time been a channel of the Ohio river?

A. Yes, sir; it would have shown it.

Question by Mr. KNOTT:

66 Q. And from that you conclude that there never was any second bank there at all?

A. I see no evidence at present of any second bank. The depression has evidently formed from the overflow of the water from the main channel, and they can be traced right up into the main channel.

And further the witness saith not.

(Signature waived by agreement.)

205 The said AZARIAH T. WHITTLESEY, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by Mr. KUMLER:

1 Q. State your name.

A. Azariah T. Whittlesey.

2 Q. You were sworn yesterday?

A. Yes, sir.

3 Q. Where do you live now?

A. Council Bluffs, Iowa.

4 Q. You came to this city at the request of McDonald, Butler & Snow?

A. Yes, sir.

5 Q. As a witness in this case?

A. Yes, sir.

6 Q. What is your present occupation?

A. I am the publisher of a newspaper at Council Bluffs.

7 Q. Did you ever live in Indiana?

A. I lived in this county, Vanderburg county, for forty-six years; from my infancy almost.

8 Q. What year did you come to Indiana?

A. My parents located in this county in the month of November, 1835. I was then less than two years old.

206 9 Q. What was your occupation while in the State of Indiana?

A. Civil engineer and surveyor for a considerable portion of the time.

10 Q. What was your father's occupation?

A. Surveyor and civil engineer.

11 Q. You left the State when?

A. I moved to Iowa in 1882, in the winter—the early part of the year.

12 Q. Then I understand you to say that from your infancy up to 1882 you continuously resided in Vanderburg county?

A. Yes, sir; this was my home during all those years. Sometimes I have been absent from the county temporarily for a year or so Once, when Governor Hendricks was Governor, I resided in Indian apolis during four years, but still I always regarded this as my home, and came back here immediately after he went out of office.

13 Q. What, if any, position did you hold under Governor Hendricks during those four years?

A. I was his secretary.

14 Q. What four years was this?

A. From the spring of 1873 until 1877.

15 Q. How long, if at all, have you known what is called Green River Island?

A. All my life; as far back as my memory extends.

207 16 Q. How far does that extend?

A. Well, back, to say safely, to 1844 and 1845.

17 Q. Have you been familiar with it during all that time?

A. Yes, sir.

18 Q. When did you last see it?

A. Yesterday.

19 Q. In connection with your knowledge of the Green River Island, so called, have you also knowledge of what is called Green River bayou?

A. Familiarly so; yes, sir.

20 Q. From your earliest recollection up to the present time, what has been the condition of the land lying northwardly of the so-called bayou?

A. Subject to overflow whenever the Ohio was at flood tide, and also the island lying in front was submerged whenever the river was at high water.

21 Q. In regard to the swales or low places and sloughs, state whether or not there are any on the northern side of the bayou.

A. Yes, sir; three or four. They are north of what is called the bayou. There are three well-defined depressions in the surface, through which the water runs when the river is up.

Question by Mr. KNOTT:

22 Q. You say when the river is up? At what stage do you mean?

A. Well, in a stage to overflow the Indiana bank—at

208 a stage, say, from low water mark up to a stage of 35 feet; I guess that is about right. I think it is from my observation.

Questions by Mr. KUMLER:

23 Q. What is the general course of those sloughs on the Indiana side, as you call it?

A. Generally nearly parallel with the course of the Ohio—more nearly parallel with what is marked on this map before me here as Green River bayou, but in the main parallel with the Ohio river, running, debouching from the river at a point up towards the town of Newburg—this side of there considerably—and running mostly parallel in the general course of the river and running into the Ohio river again below at a point just above the city of Evansville.

24 Q. I will ask you as to the sloughs and depressions on what is known as Green River Island, if any exist?

A. There are three very distinctly defined bayous running lengthways through the island.

25 Q. What is their general course?

A. Parallel with the river generally; generally with the sloughs on the Indiana side.

26 Q. How long has that state of facts existed?

A. To my knowledge for—well I am safe in saying forty years.

27 Q. State whether or not the knowledge you have of
209 Green River Island and its surroundings or any part of it was gained in an official capacity, or while you held any office in Vanderburg county.

A. Yes, sir; my father was county surveyor of Vanderburg county from the time that he came to Indiana up to about the period of 1848. Afterwards I myself was surveyor of Vanderburg county.

28 Q. And in that capacity, state whether you became familiar with Green River Island and the bayou.

A. Yes, sir; during the time of my father's tenure of office as county surveyor I very frequently was chain-bearer for him, and was very familiar with all that country. I will say right now, in connection with that, that as long back as 1845 my sister, older than myself, married a gentleman who resided—who was a farmer residing on Green River Island.

29 Q. State his name.

A. His name was Joseph Mathews.

30 Q. Did you state the year when she was married?

A. 1845; the 31st day of July, 1845.

31 Q. After her marriage, where did she move?

A. Right onto Green River Island.

32 Q. During that summer, state whether you had occasion to visit her or not.

A. Yes, sir; I was there more or less from that time until the fall of 1847, when I went to Crawfordsville to school.

210 33 Q. What was the condition of the bayou channel at that time compared with the present time?

A. Well, when the Ohio river was high there was a flood water ran through the bayou, but in the summer time it was dry. Whenever the river was at a low stage there was no water in the bayou,

only as it stood — holes, and wherever there were unusual depressions.

34 Q. Did you know the bayou prior to the time of the marriage of your sister?

A. Yes, sir.

35 Q. How many years before that?

A. Well, perhaps a couple of years, perhaps two years.

36 Q. What was the condition of it, and I refer particularly to the so-called channel of the bayou? What was the condition in the summer time or during the low water season in the Ohio river?

A. Well, it was dry, except now and then there was an unusual depression in the bed of the bayou, where the water stood in ponds. That was also true on the island and north of the island.

37 Q. Was that true about the other sloughs of which you have testified, both on the island and north of the bayou channel?

A. Yes, sir.

38 Q. As to crossing or recrossing the channel proper during the low-water stage——

211 A. At the upper end of the bayou, near the head of Green River Island, it was susceptible of passage when the river was at an ordinary stage, at any season of the year. Down this way——

39 Q. Say at the lower end, if that is what you mean.

A. At the lower end of the island the nature of the soil was such that without some artificial assistance you could not get across it, and for the convenience of travel they put in two logs and threw some shovels of dirt on top to go over; but at the upper end the passage was easy at all times of the year, when the river was at a low stage.

40 Q. Passage how—with carriages or on foot?

A. Oh, yes; or wagons—ordinary farm wagons.

41 Q. Or on foot?

A. Yes, sir.

42 Q. At the time of your recollection of the bayou channel what amount of water above low-water mark would it have required in the Ohio river to have caused a current of water to flow through the entire distance of the bayou channel?

A. My best observation has been that it required a raise in the Ohio river from what we call low-water mark of about 28 feet for the water to run through there.

43 Q. Where did the water come from that got in the bayou channel when the water in the Ohio river was at a less height than 28 feet?

212 A. Well, down at the end nearer the city of Evansville, when the river began to rise it would back up to it, and when it got to the height—I say of about 28 feet. I may not be precisely accurate as to the height, but about that—it would begin to pour through from the upper end, from the eastern end of the island.

44 Q. At what stage of water in the Ohio river would the water also flow in the head of what we call Bee slough; whether it would require a higher or lower stage to send current water through Bee slough than it would the bayou channel?

A. Something higher.

45 Q. Do you know how much?

A. Five or six feet.

46 Q. What is the general appearance of the ground at the head of the bayou channel when compared with the surrounding ground?

A. All of it is an alluvial deposit.

47 Q. I mean in reference to any indentation or any depression of the ground as you go along the river bank.

A. A person passing down the Ohio river at a low-water stage of the river—when the river was reasonably low—would scarcely notice where the bayou debouched from the Ohio river; there was simply a depression in the bank, nothing unusual; a casual observer would scarcely see it.

48 Q. What change, if any, has there been in the course of
213 the bayou channel, in your recollection?

A. Nothing material. At the upper end, where it debouches from the Ohio river, there were, in my early recollections—there were tolerably well-defined channels there that the water ran into at a high stage, but that has gradually dropped into one, and that was done by cutting timber down, dropping it.

49 Q. When you say two channels that the water would flow into at a high stage at what stage do you mean?

A I mean when the Ohio river was high enough it began to run across the bank on the Indiana side.

50 Q. You would call that a very high river, would you?

A. Yes, sir.

51 Q. Well, that brings us to Buck Island. Do you know what they call Buck Island?

A. I do; the piece of country lying just off the head of Green River slough, as it is familiarly called.

52 Q. How far is the level of the center of Buck Island above the depressions surrounding it?

A. Well, do you mean above?

53 Q. What is the difference between the level made on the center or top of Buck Island and the level of the depressions or channels, if you may call them so?

A. Oh, ten or fifteen feet; I cannot say exactly. You mean that top soil?

54 Q. Yes, sir; compared with the top of the soil in the depression.

214 A. Well, materially nothing; almost about the same.

55 Q. What stage of water now and at the time of your earliest recollectien would it require in the Ohio river to fill these depressions around Buck Island?

A. Well, the Ohio river from low-water mark would have to make a rise of 28 or 30 feet.

56 Q. What is the general appearance of Buck Island, or how does the general appearance of Buck Island to-day compare with the general appearance of Buck Island at the time of your first recollection?

A. Well, it is measurably the same.

57 Q. You stated you father was a surveyor and came here in what year?

A. In 1835.

58 Q. State whether at any time during his lifetime you had any conversations with him in regard to Green River Island and the bayou channel.

A. Yes, very frequently.

59 Q. What, if anything, did he say to you in regard to the Green River Island and the bayou channel?

A. Father's idea was——

60 Q. Not his idea; what did he say?

A. I was going to say, and he so stated to me, that it was an abnormal formation, caused by the swells of the Ohio river, and that originally it was no more than a sand bank.

61 Q. What, if anything, did he say to you in regard to the
215 water flowing in the so-called Green River bayou during low-water seasons?

A. He said that it required a sufficient rise in the Ohio river to make a current through the bayou, and at a sufficiently high stage the river would run through all the adjoining bayous that were adjacent on either side.

62 Q. Did he say how much of a rise above low-water mark it would require to go through the bayou?

A. I don't remember that I ever heard father express an opinion on that point.

63 Q. What, if anything, did he say about the bayou channel being wet or dry in the summer and during low water in the Ohio river?

A. Always dry.

64 Q. He said it was dry?

A. Yes, sir; his observation was that it was dry.

64 Q. Of what period of time then was your father speaking?

A. From the fall of 1835 perhaps running up to about 1848.

65 Q. You stated previously that you were secretary to Governor Hendricks.

A. Yes, sir; I was during his administration as Governor of Indiana.

66 Q. You may state what you know in regard to running the line under the act of the Legislature of Indiana of 1875 by
216 Commissioner Pfafflin, appointed by Governor Hendricks, and Commissioner Waldron, appointed by the Governor of Kentucky; state in that connection fully all you know about it.

A. There was such a survey made by authority of the Indiana Legislature. Governor Hendricks appointed Mr. August Pfafflin a commissioner on the part of Indiana to make survey, which was designed to delineate the boundary line between Indiana and Kentucky. In the fall of 1875 Governor Hendricks, in conjunction of [with] the various State officers of the State of Indiana—the secretary, the auditor, the treasurer, the State librarian, and myself, acting as his secretary—came to Evansville to look at the line that the surveyors had drawn. We passed over the ground. I don't think—I will say

in this connection that I don't think the attorney-general was along; I don't remember whether he was or not; I may be mistaken as to that; I don't remember that he was along—but we came to Evansville and rode over the line.

67 Q. Now, at this point, what was the occasion of your coming to Evansville?

A. With a view of seeing what the surveyors were doing.

68 Q. Now go ahead.

A. Complaints had been made to the Governor that the line was being run by the surveyors appointed on the authority of the two States at a point very much north of where everybody out
217 here regarded the division line between the two States, and we went along the road and examined the points where they had fixed monuments. The line as they had made their survey ran out from the Ohio river at a point very considerably north and east of the head of Green River Island, as shown by this plat. On the strength of the personal observation made by the Governor and the State officers, at that time Governor Hendricks apprised Mr. Pfafflin in this city, the city of Evansville, personally and in my presence, that the State of Indiana would not recognize the survey made by the commissioners; he also forbade the county recorder from entering upon the records the survey made by those commissioners. On returning to Indianapolis Governor Hendricks addressed a letter to Mr. Pfafflin, which I myself wrote, signed by the Governor, in which he was apprised that within the limit——

69 Q. State the letter.

A. That is what I was going to do—that the State of Indiana refused to be bound by the survey made, and that he had personally notified the county recorder not to enter the survey upon the record, and that he would apply to the next succeeding session of the Indiana Legislature to repeal the act of 1875. This letter, authorized by the Governor, was written by myself, and mailed to Mr. Pfafflin, of which he had been personally apprised in advance.
218 70 Q. Do you know whether a copy of that letter was kept in the Governor's office?

A. Why, I think it was; of that I cannot positively state.

71 Q. What, if anything, did Governor Hendricks say to Mr. Pfafflin in regard to the recording of this instrument in the counties of Vanderburg and Warrick?

A. He ordered him—he gave him personal and written directions not to have the record made.

72 Q. I understood you to say that he also gave the recorder of the county of Vanderburg personal directions to refuse to record it?

A. Yes, sir; that was done in my presence.

73 Q. What, if any, directions were given to the secretary of state of Indiana, if you know, by the Governor or by yourself, acting under the Governor?

A. Directions were given at that time—John E. Neff was secretary of the State of Indiana at that time, and notification was given to Mr. Neff by myself, on behalf of the Governor, not to receive or enter

upon record any plat or file the survey that might be forwarded there.

74 Q. State whether Mr. Pfafflin, at the time you came here, had completed his duties as commissioner of Indiana?

A. He had completed the field work, and, as I understood, was preparing his plat then; but the field work was done.

219 75 Q. Why did he not complete his plat and the work he was authorized to do under the act of 1875?

A. In pursuance of an order given him by the Governor not to do so.

76 Q. What order.

A. The order of the Governor not to place it upon record.

77 Q. I will ask you to state if Mr. Pfafflin's authority as commissioner of Indiana was at any time revoked; and, if so, by whom.

A. By Governor Hendricks, and in the letter of which I have spoken.

78 Q. State whether Commissioner Pfafflin, subsequent to the revocation you speak of, acted any further under the act of 1875.

A. He did not, so far as I know.

79 Q. When did he cease to act?

A. Immediately upon the notification given.

And further the deponent saith not.

(Signature waived by agreement.)

Whereupon the further taking of these depositions was adjourned until two o'clock p. m.

220 TWO O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The taking of the depositions was resumed as follows:

The said JOHN M. COULTER, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by Mr. A. H. SNOW:

1 Q. State your name.

A. John M. Coulter.

2 Q. Your age and present residence.

A. My age is thirty-six; my present residence is Crawfordsville, Indiana.

3 Q. What is your profession?

A. My profession is teacher of geology and botany.

4 Q. Are you acquainted [connected] with any college or university?

A. Wabash College.

5 Q. What professorship do you hold in Wabash College?

A. Geology and botany.

6 Q. How long have you held the professorship?

A. Since the fall of 1879. I held it previously at Hanover for five years. Ever since 1874 I have held that chair.

221 7 Q. Had you previously done any work in geology?

A. Previous to 1874?

8 Q. Yes.

A. Yes. I had been ever since 1870 a student of geology, and then was appointed assistant geologist in the Hayden survey in the Rocky Mountains, assistant geologist. I went out on the Rocky Mountains in the capacity of geologist, and then was transferred to a position as botanist.

9 Q. State what has been the character of your geological work, and describe it.

A. Well, my geological work has been of course largely in the way of class work, you might say; but the class work is not text-book work, but field work. The classes are taken out and it is practical drill on the field, the meaning of surface features and so on. I conducted a geological survey down the Wabash valley in the summer of 1871 for the State. In general, however, it has been these parties which I have taken in the field every year to instruct—that is, besides the work that I did on the Hayden survey.

10 Q. Have you done any other work for the State or Government, except the work on the Hayden survey?

A. Not what you could call geological work.

11 Q. Have you ever published any works on geology or subjects of a kindred nature?

A. I published books on botany and the relations of that
222 to geology; that is what you might call geological botany, or geographical botany. I have been publishing for a good many years.

12 Q. You may state the names and the character of the works in some detail.

A. Well, I began publishing in 1872, getting out my reports of the Hayden survey, and in that year we published the Yellowstone region, the survey in that, in which my report was embodied. The following year we worked Colorado and published the report of the Colorado mountain system and its flora, and so the work has gone on from year to year, sundry reports, the State geological reports of this State, and some botanies and books of that kind, not geological, but botanical.

13 Q. Have you ever made a geological examination of the land lying near Green River Island?

A. Yes, sir.

14 Q. And, if so, at what time and what was the character of the examination and its results?

A. The date, I think, was about June 13th last, and I came here and went out with Mr. Sanders, the brother of this one who was here this morning, who took me over the ground. We drove along this road (indicating).

15 Q. You mean the road marked "county road" on map C?

223 A. Drove along what is marked "county road" on this map C, crossing wherever there were roads to cross—some

six or seven places—crossing the so-called bayou channel onto the island, and back and forth until we came to the head; then, returning, we come down from the head of the bayou channel and then took a section across towards the north through the cypress swamp, which has been called Bee slough, to the high lands again, in that way covering the country pretty thoroughly and going down, while on Green River Island, to where we could examine this deposit, at the head of Tow-Head Island.

16 Q. You may state what is the character of the land in the region in which you examined it.

A. Well, the country from its frontage on the Ohio river and north to the high bluffs, that has been spoken of, is one alluvial, flat, river deposit and river material, made by the river and worked over by the river, and all on practically the same level excepting these furrows that are cut in by the overflow channels.

17 Q. You may explain more in detail the furrows cut in by the overflow channels.

A. When the waters of the river become high enough to cover over the flood plain they do not move in one great sheet or
224 volume. Wherever there is a line of least resistance it will furrow out channels. There are those flood channels beneath every great overflow, and these furrows had evidently been eaten out by such channels. They all tend in the same direction; all have a sort of common direction and ending.

18 Q. What is that direction with relation to Green River Island bayou?

A. Practically parallel.

19 Q. Did you make a special examination of the land in the Green River Island bayou, and what was the result of that examination?

A. Well, the land simply showed—do you mean the nature of the ground or the condition of the level, and so on?

20 Q. The nature of the ground, the condition of the level, and other circumstances.

A. Well, we found a low depression that is very much exaggerated upon such a map as that.

21 Q. Are you referring to map C?

A. According to map C. What I mean by exaggerated is that it gives one the impression on the map, when put down there, of being larger than it is really, because it is such a superficial depression without any considerable depth. This has the same sort of material as the surrounding country—a fine sandy clay, sand or sandy
225 clay, and standing here and there were pools of water when I examined it; to a great extent the channel was dry and occupied by willows and by larger and smaller trees.

22 Q. Is the land in what is marked on map C as the bayou channel to any extent under process of cultivation at present?

A. At the lower end of what is called the bayou channel I saw corn-stalks all across the channel, indicating last year's crops; for what distance I don't remember, but for a considerable distance up there. We noted it for quite a while, and then here and there along

the course there were indications of cultivation, and also at the head, where there are corn-stalks across the bayou channel.

23 Q. Did you make an examination of trees at, in, or near what is marked on map C as the bayou channel, and what was the result of the examination of those trees?

A. One of the first things I noticed after the very small and insufficient size of the channel was the heavy tree growth which was along its borders—cotton-wood and sycamores and things of that kind, of large size; the largest which we measured was about five feet; that was a cotton-wood.

24 Q. Five feet in diameter?

A. Yes, sir; its exact location I am not sure of, but Mr.
226 Sanders' brother could doubtless put it right on the map. I asked him if he could locate it, and he said he could put it exactly where it was.

25 Q. Can you locate it approximately on map C?

A. My guess would be that it was about in this region here, near this cross-section marked No. 6; one of those clumps it would be in; probably it is the one right here near 6, coming down close to the side.

26 Q. Where was that tree situated with respect to what is marked as the bayou channel on map C?

A. That tree was on the slope of the bayou channel as it slopes down into the depression. This was on the—well, down near the north slope, after it had begun to pitch into the channel.

27 Q. What, in your opinion, was the age of that tree?

A. That that I referred to just now was the stump of a large tree. The tree had been sawed down, so that it left a perfectly flat, smooth surface, and this sawing had taken place some time ago, because it was an old stump. The diameter of the stump was some three or four feet, and just as high as they ordinarily saw them, say five feet. The rings of growth were plainly visible upon the top of the stump, so that, knowing that it was not safe to estimate from simply one year's growth, I took the average of ten years' growth at a time in various places, knowing that its growth through ten succes-
227 sive seasons would fairly approximate the general rate of growth. The result showed an average of ten rings of growth in every inch and a half in diameter, which is just about the ordinary rate of a cotton-wood tree.

28 Q. How old would that calculation have made that tree?

A. Well, you have an inch and a half every ten years approximately, and two feet and a half is the radius; that would just be about 200 years.

29 Q. How far was this stump situated from the middle of what is marked as the bayou channel on map C, as evidenced by the lowest depression at that point?

A. I am not able to give the distance in feet, but as I expressed it, it was on the slope, on the northern slope of this bayou channel, a position which would have been covered by water had that channel ever been occupied by a current. I suppose from what I have heard this morning of the distance, from those who have measured it, that

it was within the neighborhood of 30 or 40 feet from the very center of the channel or depression. I think, from my remembrance, that that would fairly represent the distance.

30 Q. What, in your opinion, is the average width of what is marked the bayou channel throughout its entire length?

A. From bank to bank? I am not good at guessing, and I didn't measure it. I would say that my guess would be that it was
228 in the neighborhood of a hundred feet. It could not have been as much as that—I mean any more than that; it could not have been—that is, from top to top of the opposing banks. I heard an estimate this morning, or a measurement of 123 feet, but my judgment would be in the neighborhood of a hundred feet.

31 Q. Did you or did you not, at the time of making the examination of what is marked as the bayou channel on map C, observe any terrace formations along the sides of that bayou?

A. No; I didn't observe any terrace formations. I simply saw the high ground that was left between the furrows that I have described as overflow channels.

32 Q. If at any time what is marked as the bayou channel on map C had been a channel of the Ohio river, so that there was a continuous current through it at all seasons, would there of necessity or not have been a terrace formation visible throughout the length of the bayou?

A. There ought to have been a river bank visible as distinctly as this one two miles to the north here, or a mile. Such rivers have such banks and they are very prominent.

33 Q. Could a river of the nature of the Ohio have ever had a channel which would not have shown, if deserted, evidence of such a bank?

229 A. That would be my judgment, undoubtedly.

34 Q. What are the furrows which you have spoken of in or near what is marked as the bayou channel on map C? Explain them more in detail, please.

A. They are furrows that run with more or less regularity parallel with this bayou channel, both north and south of it; approximately parallel. Some of them converge or lead into this bayou channel itself, and some will turn off towards the north, gradually working into Bee slough, all of them, from the way that they run into each other and into Bee slough, presenting exactly what is known as overflow channels, those channels finding their way in the general direction of a flood—of its cutting into the soft surface.

35 Q. Do you or do you not find such furrows on a smaller scale within the limits of what is marked as the bayou channel on map C?

A. Do you mean in the channel itself?

36 Q. Yes.

A. I don't remember any right in the channel itself—that I saw any such furrows.

37 Q. You may state now what, in your opinion, is the manner of formation and the nature of that bayou channel, and whether, in your opinion, there has been at any time in the past a continuous

current of water at all stages passing through what is marked as the bayou channel on map C from the Ohio river?

230 A. My opinion is that this so-called bayou channel, marked on map C as the bayou channel, is simply an overflow channel—one of the overflow channels from the Ohio river—and that it never could have been occupied by a continuous current of water within at least two hundred years. By continuous I mean, of course, through the year, not from one end to the other.

Cross-examination.

Questions by J. PROCTOR KNOTT, Esq.:

38 Q. Do you believe the water ever did run through that chute from one end to the other at any time?

A. I believe it did in high water.

39 Q. Well, at any time when the surrounding surface was not overflowed?

A. No; it is really my belief that it did not. That would be my inference, that it did not—that it has practically occupied its present channel.

40 Q. And the water never has run through continuously?

A. That I will not be positive of; that would be my impression. Back of the dates that we have given of course it is all uncertainty; but the testimony of the trees and the general lay of the country now seem to indicate positively back to the limit I have given. Beyond that it is probably inference.

231 Questions by Mr. SNOW:

41 Q. Did you examine any other trees than the one of which you have spoken near cross-section 6 at the time you made your examination?

A. After I had measured that tree and its diameter and its range we kept an eye on the trees all the way up. I remember very well the tree at the head of the bayou that was spoken of, and it was approximately—my remembrance is it was about the same diameter as the tree which came from this stump that I spoke of; that tree that was spoken of by Dr. Phinney and Mr. Sanders, at the head of the bayou channel, marked on this map C; that was the same kind of a tree, and about five feet in diameter, and ought to have given the same rate of growth.

42 Q. Do you remember how that tree stood with relation to what is marked as the bayou channel on map C?

A. The head of the bayou channel is so dimly marked that we had great difficulty in finding it, although Mr. Sanders knew the country; but we supposed that that tree stood right upon the edge of the so-called bayou channel, so near as Mr. Sanders could make it out. There was nothing in the surface of the country that indicated the existence of a channel, but simply what he knew.

43 Q. Did you observe any other trees except those mentioned?

232 A. Only the vegetation, the trees in general up and down the bayou channel, and then, of course, casually across the flood plain to see whether the river had ever occupied any of the flood plain within recent times, and they all indicated the same story of trees 150 to 200 or 300 years old, which could not have stood, standing in the positions they did; it could not have been possible had there been a continuous flow of water.

Questions by Mr. KNOTT:

44 Q. You have given it as your opinion that the water never flowed from one end of this channel to the other, excepting when the whole surface of the surrounding country was overflowed?

A. Well, in what is called a high stage of water, which, I suppose, in this country means flooding over the whole flood plain more or less.

45 Q. So that at no time at what we people would call half-flood time has the water ever flowed through there?

A. I would say that the water could not have gotten through there short of that level, rising to that level; it was given as some 20 to 25 feet up in there.

46 Q. Well, suppose that that level was 20 feet forty years ago, then how?

233 A. Then it would have only have taken a little over 20 feet to have started a current.

47 Q. Then suppose sixty years ago it was only fifteen feet, then how?

A. Of course that is a question as to the rate of deposit; it is merely a question of the rate, getting from fifteen to twenty and so.

48 Q. Are you familiar with the water-shed that feeds the Ohio river?

A. Tolerably familiar.

49 Q. What is its extent?

A. Do you mean in miles?

50 Q. In square miles.

A. I don't remember.

51 Q. The water-shed of the Ohio river, above Evansville?

A. I don't remember the exact extent in square miles.

52 Q. Can you approximate it?

A. No; I could simply indicate its boundaries.

53 Q. Have you any knowledge of the effect which has been produced in the Ohio river and its tributaries by the denudation of that water-shed of its timber in the last seventy-five or one hundred years?

A. Yes, sir; I think I have some; I have some notion of it.

54 Q. What has been that effect?

A. I think it has made higher floods in times of flood, and lower waters in times of drouth.

234 55 Q. Has not the variation been very remarkable, in consequence of the cause that I have indicated, within the period that I have mentioned?

A. There has been some variation, but I think it has very often

been exaggerated; but it undoubtedly has served to increase what we call the maximum and minimum supply of waters; that and drainage together.

56 Q. Now, within the period I have indicated, is it not a fact that the banks of the Ohio river have washed and the stream widened, the area covered by water, and constantly shallower?

A. I think that the Ohio river is constantly or has been shifting. I am speaking now of long intervals of time. It has been shifting its channel through its broad alluvial bottoms, but that the river itself, as a body, covers over a broader expanse of country I rather doubt. I do not think it can materially alter its depth.

57 Q. What about this bar above Newburg here?

A. There are, of course, special localities under special conditions. Of course, there will be a deposit wherever there is a checking of the current.

58 Q. What about the Bucktown bar above here?

A. I don't know about that.

59 Q. What about the Shawneetown bar?

A. I might illustrate what I mean by this very deposit
235 on the map. The river, you will notice, swings about this Green River Island in a great curve. Naturally the current is thrown to the outside of the curve. Here, towards the inside, the waters are checked, running slower; and as they run slower they have to drop a lot of sediment that they are carrying, and the amount that they drop is out of all proportion to the diminution in the rate, too; and hence on the inside of this curve there must be growing and constant deposits.

60 Q. Now, it swings around that curve and with the backwater thrown up in this slough there would naturally be a very considerable deposit from that still backwater?

A. Backwater will always leave more or less deposit.

61 Q. Is not the backwater a natural consequence from the configuration of that river and its tributaries—in other words, is not that slough in high water, in an eddy of the river?

A. I should say that this slough hardly furnishes the conditions of backwater, because its ends are so high above the ordinary water mark.

62 Q. Where does the water come from that fills this slough up to the head before it pours over this obstruction, if it is not backwater?

A. Well, if the water ever fills in there and fills that up to
236 the head before it pours over it has to be backwater, but I did not know that it did that. I take it that this water is simply what is left by a general overflow.

63 Q. I have understood all the witnesses to say that the water would back up before it would pour over this obstruction in the head of the chute.

A. My general impression of the height down there is that it would have to be a pretty high water before it would begin to back up. If it did, why then it is backwater, of course.

And further deponent saith not.
(Signature waived by agreement.)

The said JAMES D. SAUNDERS, recalled, deposeth and saith as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

109 Q. What is the relative fill at the mouth of the bayou as compared with the fill at the head of the bayou?

A. I don't know whether I understand about the fill—the levels are at the bottom. I don't know that it is filled up that much, though.

110 Q. How much water above low-water mark does it take in the river to flow in at the mouth of the bayou channel on map C?

A. It takes 20 feet and $\frac{5.6}{10.0}$ to get in there.

237 111 Q. How much does it take to flow in at the head of the bayou?

A. It takes 29 feet on the highest place.

112 Q. Does the water begin to run in at the mouth of the bayou then first as backwater until the water has risen to a very considerable height in the river?

A. It commences to come in here at 20 feet (indicating).

113 Q. You mean at the foot?

A. Yes, sir; at the foot of the island.

114 Q. How long, in an ordinary season, will the water run as backwater into what is marked the bayou channel on map C before it will begin running as a current through the bayou?

A. Well, it is not very often that we get the floods up to 25 or 30 feet except in seasons of high water, and then when they get up that high it is not very long until they get over. It is not very often we have a flood over thirty feet, because we generally get them when they have high water and it nearly always goes over all the land.

115 Q. How long, in the ordinary year, will the water run in at the mouth of the bayou as backwater?

A. I don't know as I could answer that definitely. Sometimes the water don't rise as fast as it does at other times; sometimes it don't take but two or three days for the river to rise from 25 up to 30 feet, and sometimes it don't take that long.

238 116 Q. If I understand you then, the water would never be running in as backwater at the mouth of the bayou more than two or three days in any year?

A. Well, I don't know; it might sometimes, but as a general thing I don't think it does.

117 Q. What is the average duration in a year of high water, say 25 feet, or sufficiently high to flow in as backwater at the mouth of the bayou channel?

A. Well, I don't know that I am well enough posted about the river business to know that.

118 Q. Would it be a very short period or——

A. It would be a very short period that it would be that way.

119 Q. It would be one week or two weeks or what length of time?

A. I don't know as I could answer that, but in the summer time it is very seldom that we have any water up that high. In the winter time it is up higher than that. It would only be just while it was rising and falling that it would be at that stage.

Questions by Mr. McDONALD:

120 Q. Can you tell about the area of this island?

A. Yes, sir; it is a little over two thousand acres in the island, running around on top of the bank.

121 Q. That is, from the bayou channel to the river?

A. Yes, sir; from the bayou channel to the river.

239 Questions by Mr. SNOW:

122 Q. Does that or not include the tow-head?

A. No, sir.

123 Q. How much is there in the tow-head?

A. I did not measure that.

124 Q. How many acres should you judge?

A. I don't know. I guess there might be 150 acres or something of that kind in it. I never measured that; just took a course across the end of it.

125 Q. What is the extreme length of the island from end to end?

A. It is not quite four miles and a half on the bee-line.

126 Q. What is the extreme width of it?

A. Well, it is on this section line (indicating); it is 75 chains running across that line.

127 Q. What section line is that?

A. That is on section line between five and eight—extended westward. On section line between 8 and 9 extended south it is 68 chains and $\frac{82}{100}$.

128 Q. What is the extreme width in miles?

A. The average do you mean?

129 Q. No; the extreme width in miles from the bayou channel to the main river?

A. Well, it is a little over a mile. It would not average a mile. It would average probably not quite two-thirds of a mile.

And further deponent saith not.

(Signature waived by agreement.)

240 STATE OF INDIANA, *Vanderburg County:*

I, William S. Garber, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, hereby certify that the above-named Ira A. Fairchild, Humphrey Fickas, George Miller, Sr., David Elkins, Hester A. Holder, Elizabeth Aiken, Francis D. Allen, John James, Matthias Angel, John Miller, Sr., Peter Zapf, Levi Hooker, James D. Saunders, Dr.

A. J. Phinney, Azariah T. Whittlesey, and John M. Coulter, witnesses, were first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said depositions were reduced to writing by me; that the respondent was present by its attorney, J. Proctor Knott, Esq., and that said depositions were taken at the office of the clerk of the United States circuit court, in the city of Evansville, county of Vanderburg and State of Indiana, on the 9th, 10th, and 11th days of July, A. D. 1888, between the hours of eight o'clock a. m. and six o'clock p. m. of said days, and that the several exhibits herein appearing were by me duly attached hereto.

In testimony whereof I have hereunto set my hand and notarial seal this 19th day of July, A. D. 1888.

[Seal of Will. S. Garber, Notary Public, Indiana.]

WILLIAM S. GARBER, *Notary Public.*

241 In the Supreme Court of the United States.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent. } In Equity.

Stipulation.

It is stipulated that the taking of depositions of witnesses to be read as evidence in the trial of the above-entitled cause shall be resumed in the office of the clerk of the circuit court of the United States for the district of Indiana, in the city of Evansville, at 10 o'clock in the forenoon of Monday, September tenth, 1888, and continue from day to day, at that or such other place as the attorneys for said parties present may agree upon, until completed; that the complainant's witnesses-in-chief which have not yet been examined shall be first examined, and all depositions taken under the stipulations as to exceptions to competency, relevancy, etc., heretofore entered into.

Witness our hands this 23rd day of August, 1888.

McDONALD, BUTLER & SNOW, *For Compl't.*
P. W. HARDIN & J. PROCTOR KNOTT,
For Respond't.

242 Depositions of Jehu A. Angel, Hampton H. Angel, James Hayhurst, Milton H. Tribble, John M. Sampson, Jenkins Hugo, William Reavis, James D. Saunders (recalled), Paulina McAllister, and Edwin McJohnston, witnesses produced and sworn to before me, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, at Evansville, in the county of Vanderburg, State of Indiana, at the office of the clerk of the United States circuit court, in said city of Evansville, county of Vanderburgh and State of Indiana, on the 10th and 11th days of September, A. D. 1888, pursuant to the annexed notice and stipulations.

These depositions were taken on the part of the complainant in

a certain action now pending in the Supreme Court of the United States, wherein The State of Indiana is complainant and The State of Kentucky is respondent.

243 J. A. ANGEL, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. State your name.
A. Jehu Anderson Angel.
2 Q. Where is your residence now?
A. In Newburgh.
3 Q. How long have you resided there?
A. I have been living in Newburgh 24 years.
4 Q. Where did you reside before that time?
A. About five miles below Newburgh part of the time, and some of the time two miles below.
5 Q. How near to Green River Island did you live at the time you lived five miles below Newburgh and at the time you lived two miles below Newburgh?
A. I lived three miles above the head of the island at the time I first came here, up to about 1837. During that time I lived three miles above the head of the island.
6 Q. What is your age?
A. 74½ years to-morrow.
7 Q. When did you first come to live close to Green River Island?
A. 1830.

244 8 Q. How long have you been familiar with Green River Island?
A. Ever since I moved to the State.
9 Q. What year was it you moved into this State?
A. 1830.
10 Q. At the time of your earliest recollection, what was the condition of the Green River Island bayou channel in summer and in the times of lowest water?
A. In lowest water it was dry at the head of the island.
11 Q. What was the condition throughout the length of the bayou channel?
A. Water would stand in places through there down to the foot.
12 Q. Could the channel be crossed; and, if so, in how many places and in what way?
A. I think there was only one place besides at the head that it could be crossed.
13 Q. Do you mean it could be crossed on foot or in wagons, or in what way could it be crossed?
A. On foot. I know it could be at the head, because I crossed there myself.
14 Q. Were there any crossings for wagons in 1830?

A. There were two or three places they crossed in wagons.

Cross-examination.

Questions by Hon. J. PROCTOR KNOTT:

15 Q. Has not the mouth of the island shute at the head
245 of the island changed location since you first knew it?
A. I think the head of the island is washed off. I think it is lower down than what it was.

16 Q. And the slough is moved down corresponding—the island shute?

A. The head of it?

17 Q. Yes, sir.

A. Well, it is filled up with a bar at the head of the island.

18 Q. I understand that; but as the head of the island washed away the island shute, of course, followed it down the river—shifted down the river?

A. Of course if the ground washed away it would be further down.

19 Q. Is it not a fact that it did wash down the river? You said awhile ago that the head of the island had washed away. Now, I will ask you if it is not a fact that the head of the island shute has shifted down since the time you first knew it?

A. Yes, sir.

20 Q. How far has that slough or bayou shifted from its original position, in your recollection?

A. I think may be fifty yards since the last time I seen it. I have not been down there for a few years to the head of the island.

21 Q. How far from the mouth of the slough was this crossing—the foot crossing?

246 A. Right at the head of the island. Right at the head there is a bar.

22 Q. Has the mouth of Green river also shifted down the river, in your recollection?

A. No, sir; I do not know anything about it. I do not think it has.

23 Q. You have not observed that?

A. No, sir.

And further the witness saith not.

HAMPTON H. ANGEL, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. What is your name?

A. Hampton H. Angel.

2 Q. What is your age?

A. 72 years and a little over.

3 Q. Where do you live?

A. I live two miles below Newburgh.

4 Q. How long have you lived there?

247 A. Fifty years or more.

5 Q. Where did you live before that?

A. I lived below that with Joe Lane. I used to live with him.

6 Q. How near was Joe Lane's place and the place you live at present to Green River Island?

A. Two or three miles from there, but when I lived with Joe Lane it was about three miles or three miles and a half.

7 Q. How long have you been familiar with Green River Island and the territory around it?

A. I have known it ever since about 1830.

8 Q. What is and what has been your occupation?

A. Boating. I used to pilot boats for 30 years.

9 Q. Between what years were you engaged in boating?

A. I think I commenced boating in 1833, and boated until 1861. I was in New Orleans when I went out of it.

10 Q. Between what points were you engaged in boating?

A. Between New Orleans and any place. I went to a good many places in Kentucky.

11 Q. Have you ever made trips during the time you were engaged in boating up and down the Ohio river past Green River Island?

A. Oh, always, always past the island.

248 12 Q. How many times have you made trips past the island?

A. I think I boated for thirty years, and I think maybe 130 times, and maybe more; I rather think more.

13 Q. Were you familiar all that time with Green River Island and its surroundings and the bayou channel?

A. I went over it once in a while. I hardly ever went home but what I went up to the head of the island.

14 Q. What was the condition of the bayou channel this side of Green River Island, at the time of your earliest recollection, in summer and in times of low water?

A. In times of low water it was dry at the head. There was a big gravel bar there that made a road for buggies and wagons.

15 Q. What was the state of the bayou channel down throughout its length in times of low water?

A. In low water there was no water down there. It was in holes.

16 Q. Could you cross from the main land to Green River Island in times of low water?

A. Yes, sir; any time.

17 Q. At how many places could you cross?

A. I do not know that. I have crossed in three or four places. Since that, since then—I don't know but two places—pretty high. I think the highest ground was at the head. Whenever it broke over there it run through; but if it did not it run part of the way.

249 18 Q. What was the condition of the bayou channel at the lower end and along towards the lower end?

A. I think it was dead; muddy water stood in part of it; there was no current. I have rowed in boats 200 yards down the shute and then took them out back again. We never went through. They were corn-boats.

19 Q. What state of water was there at those times?

A. Oh, well, it was enough to get over. We did not want to haul it so far. That was when I was a boy. Joe Lane used to buy corn on the head of the island there.

21 Q. Do you mean that you could do that at times of low water?

A. No, sir; not with a boat; not unless the water was high enough to cross over the bar.

Cross-examination.

Questions by Hon. PROCTOR KNOTT:

22 Q. What kind of boats did you pilot?

A. Flat-boats, loaded with produce, pork and corn and hay and everything.

23 Q. There was a large bar, you say, at the head of this island bayou when you first knew it?

A. Yes, sir.

24 Q. How high was that bar above ordinary low-water mark?

A. Well, in right low water I think it was eight or
250 ten feet high.

25 Q. What is its height now above low-water mark?

A. I have not been there lately; I do not know.

26 Q. How long is it since you have been there?

A. It has been two or three—five years since I have been about the head of the island.

27 Q. You don't know anything about the changes that have taken place since then?

A. No, sir. I think the head moves a little and the bar makes higher, I think. It was all the time.

28 Q. The present mouth of the bayou has shifted down the river a good deal?

A. I don't think it has gone down very much. It goes in square; right square. It didn't look to me like it is down much farther.

29 Q. How far did this bar extend above the mouth of the bayou?

A. Two or three hundred yards—the gravel bar.

30 Q The gravel bar is two or three hundred yards along above the mouth of the bayou?

A. Yes, sir. It got to be a pretty good crossing.

31 Q. Has not the Indiana shore filled up considerably along there where that bar was?

A. Yes, sir; I think the timber has grown up where it was low. The first time I knew it it was little timber. I think it is cut back and is higher above.

32 Q. How much farther out does the bank extend now
251 than it did then?

A. I do not know; I have not been there lately.

33 Q. Well, when you saw it last?

A. I don't think it made much.

34 Q. About how much?

A. Well, the gravel bar might be a little higher.

35 Q. How far have those trees grown up from the original bank?

A. Well, they were growing—it always overflowed a good deal. They have cotton-wood in the fields now.

36 Q. They have cotton-wood in the fields now where it was originally what?

A. Originally sapling, and it has grown up with cotton-wood.

37 Q. The road has been changed very much since then, has it not?

A. I have not been down the road for five or ten years; I don't go about much.

38 Q. You have not observed the mouth of the river there—Green river—in the last twenty-seven years?

A. No, sir; not for the last twenty years.

39 Q. You quit flat-boating in 1861?

A. Quit in 1861. I never have been down since only to Memphis; I went one trip to Memphis.

40 Q. How wide was it between the banks of this bayou?

A. It was wider at the head than any place.

41 Q. How far was it from one bank to another?

252 A. May be 75 yards at the head, and it was wider at the head than it was down below.

42 Q. Is it not over 200 feet wide?

A. I do not know what it is now.

43 Q. I am asking you about then.

A. Well, then, it was not more than 75 yards. They had always considerable crossing there.

44 Q. Possibly you don't understand my question. There was what was called the "second banks." Isn't it plain to be seen now that between the outside banks and this original bayou there is what is called "second bottoms" that are now in cultivation?

A. It is all low there; every place it overflows.

45 Q. Yes; but that is not answering my question. Isn't it perfectly plain to be seen that between the outside banks there are what are known among the farmers here as "second bottoms?"

A. Well, I cannot tell about the second—what is "second bottom." I know it was not very wide at the head.

46 Q. You are talking about the space filled with water at the time you observed it, are you?

A. Yes, sir.

47 Q. Now, I am asking you about the first banks.

A. Well, the first banks are all alike.

48 Q. Thirty years ago?

A. Yes, sir.

253 49 Q. Then there was such things as first banks?

A. Well, it was all overflowed and mighty low ground, any of it.

50 Q. We all understand that all this ground around here is low; but I understand you to say that there was such things as what is known as "first banks."

A. Yes, sir; of course.

51 Q. The question I asked you is what is the distance between these first banks which indicated the second bottom and the thread of the stream?

A. Well, I don't know the second bottom; I don't know how the banks—it is all alike—the slope is all alike. If I measured from the timber it may have been two or three hundred yards—the timber land. The timber land was close to the banks on either side of the bayou, and then it was pretty high.

52 Q. How high above the common level was it?

A. High enough for timber to grow. It won't grow where water runs.

53 Q. When you first knew that island was it cleared or timber land?

A. Well, the head of it had timber on it, growing on the outside—on the inside a little piece down about two hundred yards.

54 Q. Wasn't the lower end of the island in timber at that time?

A. Yes, sir.

254 55 Q. How much of the island was cleared when you first knew it?

A. I suppose about half of it.

56 Q. Who owned it at that time?

A. A man by the name of Franceway owned part—Mr. Trible's father-in-law.

57 Q. Did Mr. McClain own any land there?

A. Yes, sir; he owned land about the middle, I guess.

58 Q. Was that island cultivated by slave labor?

A. Yes, sir; I think it was by the McClains, anyhow.

59 Q. That ground was cultivated by slave labor and slaves lived on the island?

A. Yes, sir.

60 Q. For how many years was that?

A. I don't know.

61 Q. Was it not up to the emancipation proclamation freeing the slaves?

A. Yes, sir; I think there were slaves there until the war.

62 Q. Was it not the universal understanding that the Kentucky line ran down that slough, and that Green River Island was part of Kentucky?

A. Why, they claimed it.

63 Q. Wasn't that the universal understanding among the people, that the Kentucky line did run down that slough?

255 A. I always heard that the island belonged to Kentucky; that was all.

Re-examination.

Questions by A. H. SNOW, Esq.:

64 Q. When did you first come to live in this county?
A. 1830.
65 Q. And have you ever since that time been familiar with Green River Island?
A. Oh, of course; when I was boating I always ran from the head of the island from McClains'. I always was on the river, and I lived with Joe Lane seven years, and he kept a wood yard always at the head of the island; we kept our boats down the mouth of Green river.
66 Q. What was the character of the bayou channel, at the time of your earliest recollection, with respect to its being wooded or covered with underbrush?
A. It was not about the head, but there was big timber on the island, on the head between it and the first farm.
67 Q. Was there brush or timber in the channel of the bayou at the time of your earliest recollection?
A. Not at first there was not, but it did grow up.
68 Q. Was there or was there not brush in the channel—at the head or further down anywhere in the channel?
256 A. Not only in places. It might have growed in places there, but there were other places where the water stands.
69 Q. What did you understand by the expression "first and second bank?"
A. I don't know; I couldn't hardly understand that. It is a regular slope, and I don't know whether there would be second banks along the timber—as far as the timber I was counting.
70 Q. You were counting the distance between the timber?
A. Yes, sir.
71 Q. The heavy timber near the head of the bayou?
A. Yes, sir; that is what I was a-counting, if there was any, but I couldn't hardly see the difference, though.
72 Q. Was there any heavy timber between the principal timber on each side—any heavy trees?
A. There was not any big trees on the island side.
73 Q. To what did you tie your lines when you went in there with your flat-boat at the head of the channel?
A. Tied to some trees that grew out about the bank. It was very narrow.
74 Q. How large were the trees you tied to?
A. Oh, pretty big sized. They grew in the bank.
75 Q. About how large were they; how large were they in diameter?
257 A. 18 inches or 2 feet.
76 Q. Were there trees on both sides of the channel?
A. Yes, sir.
77 Q. That you could tie to?
A. There was a short elbow and we got down and tied to it.

78 Q. How far apart across the channel were those trees on either side of the channel that you tied to?
A. It was narrow there.
79 Q. About how wide was it?
A. It was not more than fifty yards.

Recross-examination.

Questions by Hon. PROCTOR KNOTT:

80 Q. What kind of timber was it that stood on the head of the island?
A. Cotton-wood.
81 Q. They were on the island and not in the shute?
A. Yes, sir.
82 Q. There were no large trees in the island shute?
A. On the bank there was, but not anywhere in the water.
83 Q. They were not down in the shute, but they were up on the bank?
A. Yes, sir.

And further the witness saith not.

258 JAMES HAYHURST, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. What is your name?
A. James Hayhurst.
2 Q. What is your age?
A. I was born in 1810, and came to this country the spring of 1820 and landed here on the 1st day of March.
3 Q. Where did you live when you first came to this country?
A. On Locust and Water streets in the city of Evansville.
4 Q. Where have you resided since that time?
A. Well round and about since. I used to farm out here in the country a little and carried on a tanning business in Gibson county a little while, and have been around not far off ever since. Next March will be 69 years since I came here.
5 Q. How long were you living in Gibson county, Indiana?
A. Six years.
6 Q. What years were those?
A. Well, I went to tanning there in 1840.
259 7 Q. From 1840 to 1846 you were in Gibson county?
A. Yes, sir.
8 Q. All the remainder of the time you have been living in or about the city of Evansville, have you?
A. Well, I lived awhile at Newburgh. I am one of these trading kind of men. I don't stay long at a place. I get a place and fix it up nicely and sell it, and go off again.

9 Q. Have you or not since 1820 been familiar with Green River Island and the territory around it?

A. Oh, yes, sir; I know all about it. I have been up and down it a good deal when I was a boy. I came down it when we came by boat—came by flat-boat. We came right down through that chute. The river was bank full.

10 Q. How many times have you come down the Green river channel on flat-boats or any other boats?

A. Never but once—only the one time.

11 Q. Have you or not had the occasion to pass it and pass near it in your trading business frequently?

A. No, sir; that is, I was along up on the bank the spring of 1820—the spring of 1820, I say. It was the spring of 1868 I went along, and I have not been along there since I went up along there in the spring of 1868. I came from Memphis. I went out there in
260 the spring of 1867, and I was trading all winter in the South, and I came here in the spring of 1868 and went right up the river bank and bought property in Newburgh, and then moved down there, and I have not been along there since.

12 Q. I understand you to say that you became acquainted with the Green River Island in the spring of 1820?

A. Yes, sir; I came right down that bayou in a flat-boat.

13 Q. What month in the year of 1820 did you go down it?

A. The first day of March we landed here. My father put up the first blacksmith shop here, on the corner of Locust and Water streets.

14 Q. Have you been familiar with the Green River Island bayou channel since 1820 or not?

A. Oh, yes, sir; I have been up and down it when I was a young man a good deal.

15 Q. What was the condition of the Green River Island bayou channel in 1820 and the year immediately succeeding in summer time and in times of low water?

A. In summer time it was dry, all but the holes, and when the river was full there was plenty of water. In 1884 we went up there in a flat-boat and the water was all over everything.

16 Q. What month was that?

A. Why, it was in February.

17 Q. During the time of the flood?

261 A. Yes, sir; the time of the flood.

18 Q. In 1820, and for some years succeeding, in how many places was it possible to cross from the Indiana shore to Green River Island in the summer and in times of low water?

A. A good many places.

19 Q. Were there crossings for wagons?

A. Not with horses, but men could cross on foot in different places where there was a sediment formed, and the horses would go down below.

20 Q. Were there places where horses and wagons could cross?

A. Yes, sir; at the head of the gravel they could cross.

21 Q. At how many places could you cross dry-shod on foot in the year 1820 and the years succeeding that?

A. I could not tell you that; there were a good many places. You could cross it almost any place; it was dry all along.

Cross-examination.

Questions by Hon. J. PROCTOR KNOTT:

22 Q. Will you please now locate some of those places?

A. Can I?

23 Q. Yes, sir; that you could cross that stream in 1820 dry-shod.

A. Yes, sir; at the head you could cross it, and there were two or three places where they could cross it—at the head of the
262 island and then below. At Henry Angel's there was a crossing, and, I believe, at the place of a man by the name of Stansbury that lived on the island you could cross; I am not certain about that.

24 Q. That was in 1820?

A. Yes, sir.

25 Q. Did Stansbury live there in 1820?

A. I could not say whether Stansbury lived there in 1820 or not. A man by the name of Wells lived there, but he did not live there in 1820.

26 Q. When did he go there?

A. I think about 1830, or 1831, or 1832.

27 Q. What was his given name?

A. Bill Wells.

28 Q. Where does he live now?

A. Just above the mouth of Green river. My father raised him from a boy of seven years.

29 Q. Those places that you crossed dry-shod, were they high-made, artificial causeways?

A. Yes, sir; and another thing you have not asked me about is this: The people cut trees. Say here is the bayou (illustrating) and this is the tree hanging over this way, and they cut it half way in, and the trees would bend down and fall up the bayou on both sides. Well, they got to clearing up in there and making bigger
263 farms, and they got to loading flat-boats, and they made a fuss about it, and they cut them trees loose; but while they were there they formed a good deal of sediment and caught the wash, you know. Gen. Joe Lane said they must be cleaned out; that that was a navigable stream, and they must clean out that drift and the trees so that they could get down the flat-boats. He was a man that bought a good deal of corn.

30 Q. Those large trees stood on what was known as the first bank?

A. There was no second bank. It was all flat, and the trees stood right on the bank of the bayou.

31 Q. About how far apart were those trees?

A. Well, some were right close together and some were quite a distance apart.

32 Q. What was the average distance between them?

A. That I could not say; maybe some five feet apart and maybe some fifty.

33 Q. I mean from one bank to another?

A. Oh. Well, some places was wider than others. I suppose 100 yards in places and in some places not more than half that.

34 Q. And in some places more than that?

A. Yes, sir. The trees stood right on the bank. It did
264 not appear to wash any; I could not say they washed any. The trees generally hung over the water.

35 Q. Are not a great many of those trees still there now?

A. I don't know. I never have been along there for twenty years.

36 Q. You have lived in this community since 1820?

A. It will be 69 years since I came here.

37 Q. Now, what was the universal understanding as to the ownership of that island; was that considered a part of Kentucky?

A. Why Kentucky I always heard.

38 Q. The Kentucky line ran down that island chute, did it not?

A. Yes, sir; that was the understanding with me.

39 Q. And with everybody else that you heard talk about it, was it not?

A. That is what everybody said, that it belonged to Kentucky; all that I ever heard talk about it.

Re-examination.

Questions by A. H. SNOW, Esq.:

40 Q. In 1820 were all the crossings of that bayou channel made in the way you described?

A. Yes, sir.

41 Q. Were there any places where you could cross where there were no trees cut down?

A. Oh, yes, sir; there were crossings where there was not.
265 Old logs would come and lodge and then the sediment would rise up on them. You know how it does on a river with no current, how the water will raise, and then, where there is logs, the old logs settle down and the sediment will wash against it and fill up over it, and that was the way it was in a good many places along that bayou.

42 Q. Were there any crossings in 1820 between those holes you speak of, where there were not logs, where you could cross on the land?

A. Yes, sir: I used to put my cattle up there when we lived there; we put them up on the cane. It was not cleared up much when I came here, and in the dry time we took our cattle up there and put them on the cane, and we had to go over there twice a day.

And further the witness saith not.

266 MILTON HOMER TRIBBLE, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. What is your name?
A. Milton Homer Tribble.
2 Q. What is your age?
A. 69 years old.
3 Q. Where do you live?
A. I live in the eastern part of the city—not in the city, but beyond the city limits.
4 Q. How long have you lived in this neighborhood?
A. I have lived in this neighborhood since March, 1835. I lived west of Evansville the principal part of the time.
5 Q. Where have you lived since 1835, exactly?
A. Part of the time I was living below town here, part of the time in town, and part of the time up the river, and part of the time on Green River Island.
6 Q. What time was that?
A. In 1844. I raised a crop there.
7 Q. How near to Green River Island did you live when you lived above the city?
A. I suppose it was a mile.
267 8 Q. Between what years were you living near Green River Island?
A. I do not understand you.
9 Q. I am speaking now of the time when you lived, not on Green River Island, but above the city, near Green River Island.
A. Oh, I lived in the city all the time; that is, I lived one or two years down below the city, and the balance of the time in the city. Well, one year—in 1835—we lived in the river bottom, and that was about a mile above town.
10 Q. How far were you living in 1835 from Green River Island?
A. I suppose it was a mile across from where we lived to the island.
11 Q. Were you in 1835 familiar with Green River Island and the country around there?
A. Not in 1835. In 1837 I first became familiar with the island.
12 Q. What was the condition of the Green River Island bayou channel in 1837 in summer and in times of low water?
A. In the fall of 1837 we were living then out on the old State road, as we called it, about a mile from town, and father bought 400 bushels of corn on the island, and I hauled it across the bayou there in the fall of 1837. I was driving the team at the time.
13 Q. At what point in the channel was this road?
A. I think it was called Garrett's place then—about where
268 Angel's place was afterwards.

14 Q. Was that near the head or the foot of the island, or where was it?

A. Well, I suppose pretty near half way down the island.

15 Q. What kind of a road was that you crossed on?

A. A common wagon road they drove across there. Old man Garrett, I believe, then hauled corn, and the Emreys down here, to the still. There was not as much corn raised there then as now.

16 Q. Did you understand that road to be an old road or a new road?

A. It was a common wagon road; not very old, as far as I knew anything about it. It was a road that had been used for a year or so, anyhow—common enough, old enough to me.

17 Q. In 1837 were there other places besides this road or not where you could get across the channel?

A. Yes, sir; there were two other places besides that in the bayou, and in the head there was another one; you could cross at Garrett's place, and you could cross there at the Lane place, it was called then.

18 Q. What kind of crossings were those crossings for wagons?

A. Well, they could drive wagons across that first crossing all the time. You could cross any of them.

19 Q. How was the channel in regard to crossing it on foot?

A. At the lower end?

20 Q. During times of low water in 1837?

269 A. Well, you could cross it. Water stood in the lower end of the bayou pretty near all the time.

21 Q. At how many different places in 1837 could a man cross the bayou channel on foot dry-shod?

A. I do not know how many, but I know of four.

22 Q. Those were well-defined crossings, were they?

A. Those were crossings where people drove across; people drove back and forth back to the island.

23 Q. Are you a married man?

A. Yes, sir.

24 Q. What was the name of your wife before she was married?

A. My first wife was named Franceway. I have a second wife.

25 Q. Where did her father live?

A. He lived on the island there.

26 Q. During what years did he live on the island?

A. He used to tell me he lived there all his life, or there in that neighborhood. I guess he lived on the other side and right around in the neighborhood of it. That was the place where I first knew him.

27 Q. When did Mr. Franceway die, if he is dead?

A. I think he died in 1846.

28 Q. How old a man was he when he died?

A. 68 years old.

29 Q. Have you ever heard him say anything about the condition of the Green River Island bayou or channel?

270 A. He used to drive across the channel—team across there back and forth.

30 Q. Have you or not ever heard Mr. Franceway say anything

about the condition of the Green River Island bayou channel during the years before Indiana became a State—that is, before 1816?

A. He said right before that he crossed over from this city—teamed across—and had hunted across all this part of the country, and he told me he had killed buffalo right here in Evansville.

31 Q. Did I understand you to say that before 1816 he had teamed across the channel?

A. Well, I could not say the time, but he said he had passed back and forth on this side with his team. I reckon it was in going to the mill. There used to be a mill site way out here on the creek that they went to in those days. They had to go a good ways sometimes, and they passed back and forth there.

32 Q. Did Mr. Franceway specify the way in which he used to cross that channel before 1816—whether by team, on foot, or by boat?

A. He just said he hauled across the bayou.

33 Q. He said, if I understand you, he hauled across the bayou before Indiana became a State. Is that what you say?

A. Well, I don't remember. He was talking—he was one of those old frontiermen—and he was talking about his ex-
271 ploits when a young man—about hunting and all that—and he used to tell it over and over; but as to the particulars I don't remember as to that. I could not do that.

Cross-examination.

Questions by Hon. J. PROCTOR KNOTT:

34 Q. How were those crossings made? Were they not causeways thrown up by the people living on the island?

A. No, sir; there was nothing of that sort that I know of.

35 Q. You don't know that they were thrown up by the people on the island?

A. Yes, sir, I do; but they were dry land. There was no land thrown up on them.

36 Q. You don't know whether logs had been covered up with sediment or not to make those crossings?

A. Oh, no; some of them were 150 yards between the water on each side, and they could cross along any place on the bar.

37 Q. A bar had made in the channel and filled up?

A. There would be a bar and a low place, and I believe rather that you could drive right over. There was a place down below Garrett's farm.

38 Q. Has not that channel been filling up for a long series of years?

A. I suppose it has; I know it has along below the head of it; I don't know whether it has been filling at the foot.

272 39 Q. Hasn't the current rather been gradually cutting away from the Henderson shore for a long series of years?

A. Not at the head of the island; no, sir.

40 Q. Along in the bend around the island?

A. Down around the tow-head I think it has; along where McClain used to live.

41 Q. Has there not been a large quantity of made land on that island, within your recollection?

A. No, sir; I do not think there has much. There has always been a bar next to the river clear around—well, nearly to the foot. Possibly a mile and a half or two miles from the foot of it here there is a bar out in the river. I don't think it has filled up any more than filled up a little on top. It is a bar I have walked on a good deal.

42 Q. If there has been any accretion on the island on either shore you do not know anything about it?

A. I do not think there has; maybe it has filled up a little.

43 Q. Hasn't there been any filling of the surface land?

A. No, sir; I think not; not on the main land. I know there has not, unless it would be in some sloughs.

44 Q. Did you ever see any picket fence on that island?

A. I don't remember.

45 Q. How far was it between the standing timber on each bank of the slough?

A. Where I hauled the corn across I suppose it must have been as much as 60 or 70 feet between the big timber—the large
273 timber. Well, in fact, there was no timber nearer than that.

46 Q. That is, from one bank to another?

A. Well, the space that was open between them from shore to shore.

47 Q. Were there any islands in that slough at all?

A. There was some when I first noticed it—some little islands along up the slough. Only one that I know of.

48 Q. When did you observe that?

A. That was just below where I could haul across. There was water standing on both sides a little piece off. You might call it an island or a small piece of ground or a knoll standing up there.

49 Q. Where was that particular point at which you say these trees were 60 or 70 feet apart?

A. It must have been near the center of the island; nearer the head than below, if anything. It was near the middle where I hauled the corn across.

50 Q. When did you haul the corn across?

A. The fall of 1837.

51 Q. What has been the general understanding among the people as to where the Kentucky line was located?

A. I always understood the island belonged to Kentucky. I do not know anything about the line, where it was.

52 Q. The line ran down somewhere north of that island?

A. It must have been if the island belonged to Kentucky. I understood it did belong to Kentucky.

274 53 Q. Have you ever heard that question discussed as to where that line was—the State line between Kentucky and Indiana?

A. Yes, sir; for the last 15 or 20 years I have heard it talked about. Some placed it about the middle of the bayou and some

claimed to the top of the hills on this side, but none placed it further than the middle of the bayou and then up to the tops of the hills.

54 Q. Your father-in-law, Mr. Franceway, lived there on that island?

A. Yes, sir.

55 Q. And owned land there?

A. Yes, sir.

56 Q. From whom did he get that land?

A. I don't know who he got it from.

56 Q. From a man by the name of Jones?

A. I don't know as I ever did know.

57 Q. In order to identify it you may give his full name.

A. Abram Franceway.

58 Q. Do you remember of your father-in-law and a Mr. Jones having a controversy about that land?

A. No, sir; I don't.

59 Q. Do you know of the time Mr. Franceway moved there?

A. No, sir; I don't. I didn't get acquainted with Mr. Franceway until about 1843. That was when I first got acquainted with him.

And further the witness saith not.

275 JOHN M. SAMPSON, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. What is your name?

A. John M. Sampson.

2 Q. What is your age?

A. My age is 71.

3 Q. Where do you live?

A. I live in Evansville.

4 Q. How long have you lived in Evansville?

A. 51 years.

5 Q. Have you lived all that time in the city?

A. I have lived in the city all the time or nearly all the time; sometimes out in the country.

6 Q. Where did you live when you lived out in the country?

A. Lived at my brother-in-law's, Mr. Hornbrooks.

7 Q. How far is that from Green River Island?

A. That is in a different direction. It is in Scott township.

8 Q. Where did you live before you lived in Evansville?

A. I lived in Cincinnati; I was born and raised there, and came to Evansville in 1876.

9 Q. Are you now familiar with Green River Island and its surroundings; and, if so, for how long have you been fa-

276 miliar with it?

A. Well, so far as my capacity goes I am a great hand for

fishing, and I used to fish up here in the bayou a good deal, especially when it was low water along there, and there would be holes along in the bayou.

10 Q. When did you first begin to fish in the bayou channel?

A. Oh, I fished there 45 years ago, and more.

11 Q. What was the condition of the bayou channel 45 years ago in summer and in times of low water?

A. The times I used to generally go up there it was generally low water, and there was crossings at different places all along up the bayou.

12 Q. What kind of crossings were those you speak of?

A. Well, some of them pretty broad.

13 Q. How broad?

A. Well, I saw them hauling wood across with teams; hauling it from the island across to the main land.

14 Q. How long ago did you see them hauling with teams across from the island to the main land?

A. I suppose 35 or 40 years ago. There was clearings on the island then.

15 Q. When you first began to go fishing in the bayou channel, what kind of crossings were there?

A. Well, they were pretty high—that is, in low water; high enough for teams to cross.

16 Q. Were those crossing on solid ground or were they made up upon logs and brush?

277 A. Solid ground; it looked to me like nothing more than sand.

17 Q. How many crossings were there when you first became familiar with the bayou channel?

A. Well, I think there were five or six that I can be sure of.

Cross-examination.

Questions by Hon. J. Proctor Knott:

18 Q. On whose land were those crossings?

A. That is where I can't tell you. I don't know who owned the ground. Dickson, I think, owned some and McClain owned some; who the others were I cannot say. These crossings were at different places, and at some it was 75 or 100 yards, perhaps more than that, between the holes.

And further the witness saith not.

Jenkins Hugo, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. Snow, Esq.:

1 Q. What is your name?

A. Jenkins Hugo.

2 Q. What is your age?

A. I am in my 78th year.

278 3 Q. What is your occupation and what has it been?

A. I have been for the last 30 or 35 years steamboating on the river and building boats together. I have built the three best boats that ever were built there.

4 Q. What was your occupation before that time?

A. Carpenter and builder.

5 Q. Where do you live?

A. I live in Evansville.

6 Q. When did you come to live in Evansville?

A. In November, 1833.

7 Q. Have you lived in Evansville ever since?

A. Yes, sir; with the exception of a few months that I have been out putting up buildings or bridges or something like that. My residence has always been here.

8 Q. How long did you say you had been boating?

A. I went to steamboating in 1836.

9 Q. Where did you steamboat?

A. Steamboated in the Ohio and in Green river and in the Wabash principally.

10 Q. How many years have you steamboated?

A. Well, I did not quit steamboating until I got too old to do anything—about five or six years ago.

11 Q. While you were steamboating were you familiar with Green River Island and the bayou channel?

A. Yes, sir; I have been up and down the shores and been
279 ashore and got timber sometimes. I have been a pilot as well as a captain of a boat for a number of years—ever since the first license was issued—and I have been familiar with the shores all along here—ought to be, for the time I have run here.

12 Q. Did I understand you to say you were a pilot at that time?

A. I have been a pilot and steamboat captain ever since there was any license issued.

13 Q. Since the year 1836?

A. There was no license issued then, but then I occupied those positions when I first started out.

14 Q. In 1836 where was the channel around the Green River Island?

A. Well, it is pretty near as it is now.

15 Q. Could you run a boat on this side of Green River Island in 1836 at low water?

A. On this side—why the channel was on the other side of the island.

16 Q. Yes; but could you at any stage of water run a boat on this side of Green River Island in 1836?

A. This side? I hardly understand your question.

17 Q. Could a flat-boat be run on this side of Green River Island at any ordinary stage of water?

A. No; not that I know of. We used to go through there on this

side of the island, but the regular channel, you know, would be that way (indicating) from the island.

18 Q. What was the state of the bayou channel on this
280 side of Green River Island in summer and in times of low water?

A. I never knew there was any channel in there. I knew there was a little bayou in there, but never knew much of it only in high water. When the water was all over the banks here you could run a flat-boat or steamboat any place from the mouth of Green river down to the town here—that is, when there was a quantity of water all over there.

19 Q. What was the condition of that bayou during summer and during times of low water in 1836?

A. Well, I never was on it only up the road—what I seen of it by passing along the road, and that was only a little. In low water there were little pools of water here and there along it.

20 Q. How much water would it take in the river in 1836 to enable a boat to go through there where that bayou is?

A. How high the river would have to be? Well, I could not tell you. As well as I can bring to mind now, I suppose there must have been a channel at that time—we will suppose, now, about 1840—and there must have been at least 15 or 20 feet of water in the river for water to run in through the head of that chute. Now, I had no way to ascertain correctly only just from the appearance of the bank and being familiar with the banks in passing up and down. That is about all the decision that I can give about the quantity that it would take.

281 Cross-examination.

Questions by Hon. J. Proctor Knott:

21 Q. Haven't steamboats as well as flat-boats very lately passed down and up this island bayou since 1836, when the water wasn't yet quite out over the banks?

A. Well, I have never seen either come through because my business, you know, was not up and down the bayou; but I only heard of one steamboat going through, and that was in the high water of 1835. They told me that a certain little boat was lying down here at the wharf, and they said they were going up through the chute. It was a little boat called the "William Penn."

22 Q. Was that in 1835?

A. That was in the spring of 1835. We had very high water here then.

23 Q. Do you remember when the remains of Captain Kane were brought up from New Orleans?

A. Well, I have a slight recollection.

24 Q. Didn't the steamboat that brought his remains go up that bayou channel?

A. I could not say. I was at that time engaged in building the first big mill that was ever built here. I was working at the distillery. They might have gone up there. I had been told of it, but

I never saw anybody go through and never saw any boat that ever attempted to go through.

And further the witness saith not.

282 Whereupon, at the hour of 12 o'clock noon, the further taking of these depositions was adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The parties met pursuant to adjournment.
Present: The same as before recess.
The taking of the depositions was resumed as follows:

Mr. SNOW: I will pass this paper over to the notary to attach to the testimony. It is stipulated that this is to be taken in lieu of the original. It may be marked as Exhibit F.

Gov. KNOTT: All objections to the paper marked as Exhibit F, on account of its being a mere copy, are waived, other exceptions, if any, being reserved.

Mr. SNOW: That is right.

The paper above referred to being in the words and figures following, to wit:

283 I hereby certify that the map hereto attached, marked C, is a true copy, made by tracing, of map numbered 13, Ohio river, as engraved and published in the work entitled "The Western Navigator, containing charts of the Ohio river in its whole extent and of the Mississippi river from the mouth of the Missouri to the Gulf of Mexico, accompanied by directions for the navigation of the Ohio and Mississippi, and such information concerning the towns, etc., on their banks, as will be most useful to travellers. By Samuel Cumings. Vol. 1. Published by E. Littell, No. 88 Chestnut street, Philadelphia. 1822."

And I do further certify that the volume of charts or maps above cited has been in the Library of Congress upwards of twenty years.

Witness my hand this 26th day of July, A. D. 1888.

A. R. SPOFFORD,
Librarian of Congress.

WASHINGTON CITY, *District of Columbia,* } ss:

Before me, James D. Maher, a notary public in and for said District, personally appeared the above-named A. R. Spofford and made oath that the foregoing statements are true.

[SEAL.] JAMES D. MAHER,
Notary Public.

(Here follows diagram marked Exhibit F.)

From Map No. 13 Ohio River, in
"The Western Navigator, containing Charts of the Ohio River in its whole
Extent, and of the Mississippi River (&c)
By Samuel Cummings.
Uffl. Folio. Philadelphia, Published by E. Littell, 1822".

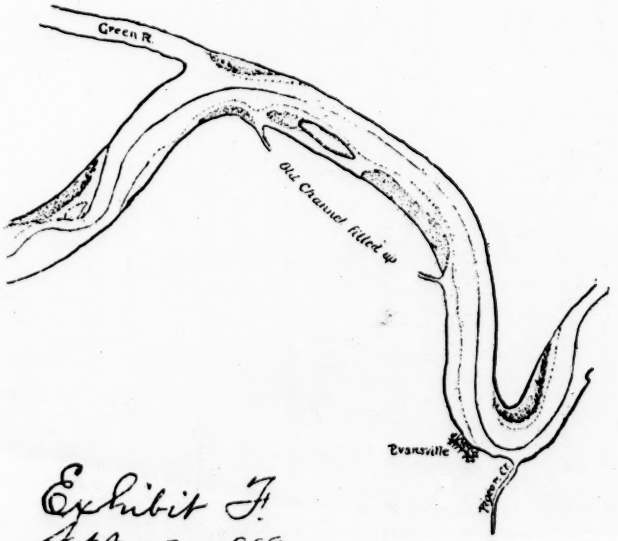


Exhibit F.
Sept. 10, 1888.
H. J. Notary.

Exhibit F.

284 WILLIAM REAVIS, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by A. H. SNOW, Esq.:

1 Q. What is your name?
A. William Reavis.
2 Q. What is your age?
A. 73 years old.
3 Q. What is your residence?
A. I live in Evansville.
4 Q. How long have you lived here?
A. About twenty-five years.
5 Q. Where did you live before that time?
A. I lived in Gibson county, an adjoining county to this county, Vanderburgh county.
6 Q. Were you born in Gibson county?
A. Yes, sir.
7 Q. Did you make visits to this county before you came to live here, and were you familiar with this county?
A. Yes, sir; from 1832 up to the time I moved here I made frequent visits here. I lived here one time about a year; during the year 1844 and 1845.
8 Q. Were you in this vicinity in the year 1832?
A. Yes, sir.
9 Q. If so, what time in that year and under what circumstances?
A. I lived in Gibson county during that year, but I visited
285 this county some two or three times during that year and staid in some two or three weeks at a time.
10 Q. Were you in the vicinity of Green River Island during the year 1832?
A. Yes, sir; I was on that island for two or three weeks.
11 Q. In what month of the year?
A. I was there first in March, 1832, and then afterwards I was there in the summer, in July. Then I was there again in September, in the month of September.
12 Q. What was the condition of things in those times, in the year 1832, about Green River Island?
A. In the month of March, 1832, the river was at full height. It had fallen just a little when I saw it, and I crossed the bayou at that time in a ferry and stopped with my brother-in-law, who owned a farm and lived on the island.
13 Q. Was that an ordinary or unusual flood in that year?
A. That was an unusual flood; the greatest that has been, so far as my knowledge has been, for one hundred years, excepting the flood of 1884.
14 Q. What was the condition of the Green River Island bayou in the month of March, 1832, with respect to crossing it?
A. It was very full. I saw the steamer "Highlander" go through

it. In crossing the bayou I saw the steamer "Highlander" pass through.

15 Q. This was in the month of March.

A. This was the month of March. It was before the river had receded far; it had gone back only a little. The bayou
286 was up at full height when I saw the steamer passing through.

16 Q. Was the steamer able to pass through the bayou?

A. Not altogether. There were some places where the channel was not sufficiently large.

17 Q. What course did the steamer take?

A. The steamer then had to go through the corn-fields, through the cleared land, a little off from the channel.

17 Q. At that time was the surrounding country there overflowed, and to what extent was it overflowed, if any?

A. Well, the surrounding country was all overflowed to a considerable extent. I cannot just remember about the depths of the overflow, excepting I know it was very extensively overflowed. It was all over the lower lands above the city.

18 Q. What was the next month in 1832 when you were there?

A. In July.

19 Q. What was the condition of things in July, 1832?

A. Well, the summer following the March that I saw it was a dry summer, and the bayou was very low. Well, it ceased to run part of the time and stood in ponds in heavy washouts; where it was running in some places it might be seeping along a little, but you could walk over many places.

20 Q. At how many places, in your opinion, could you walk over it in the month of July, 1832?

A. I suppose twenty places it could be walked over. There
287 were deep holes of water intervening, however, where there were large fish. I remember of going out in large skiffs and helping to catch fish some time early in July; but between those deep washouts or holes there was dry, sandy bottom frequently cropping out, where teams could cross and footmen could cross if they chose.

21 Q. I understand you to say you were there in March, July, and September; what was the condition of things in September, when you were there?

A. In September the bayou was still very low—lower than in July, I think, but a good deal as it was in July; not a great deal of difference. It was a dry summer and a dry fall during that year.

Cross-examination.

Questions by J. PROCTOR KNOTT:

22 Q. When you speak of the channel being too narrow for steamboats to go through, what were the obstructions; what bounded the channel?

A. Trees sometimes overlapped, and at other times there were

logs and drift, so that boats could not go in the channel. There was an accumulation of drift.

And further the witness saith not.

288 JAMES B. SAUNDERS, recalled for further examination-in-chief, testified as follows:

Questions by A. H. SNOW, Esq.:

1 Q. What is the average width of the main channel of the Ohio river on the south and east side of Green River Island from the head of the island to its foot?

A. I don't know as I could answer that exactly.

2 Q. Approximate it.

A. I measured the river right opposite the water works—that is, right down below that—and between the banks there it is thirty-four hundred feet wide, where I measured it. It runs about 3,000 feet along there in places. In some places it may be a little more and in some places a little less.

3 Q That is, from bank to bank?

A. Yes, sir.

4 Q. Outside of what is known as Green River Island, between what is called Green River Island and the Kentucky shore proper, the average width is about 3,000 feet?

A. The average width is about 3,000 feet between the main banks of the river.

Cross-examination.

Questions by Hon. J. PROCTOR KNOTT:

289 5 Q. Recurring to the cross-section marked Exhibit E in your deposition, I wish to ask you whether, in making those cross-sections, you measured the distance from the top of the bank, where the road runs, to the top of the farther bank, which is known as the first bank of the bayou?

A. Well, in some places there are other sloughs to within three or four feet of the depth of the bayou, and in some places we ran clear across them where there were roads across—clear across to where they have, some places, the second bank, and some places there are not—what they call second banks. Where there would be islands or where the channels would be deeper, and where the roads ran across these depressions or sloughs, we ran clear up to the high bank.

6 Q. I understand you, then, there have formerly been islands in this slough?

A. I guess that is what there has been in there. There are places that come into the bayou in different places.

7 Q. How many of those appearances, which you take to be islands, did you notice?

A. Well, there are two or three. In some of them there are low places right near the road that have formerly been ponds not as

deep as the main bayou, and other places there are some on either side of the bayou.

290 8 Q. What I want to call your attention to is, take the cross-section number 2 and state whether or not it embraces the distance from the road on top of the Indiana bank to the top of the first bank on the island.

A. Yes, sir.

9 Q. Now, what is the distance marked on your chart there from the road to the top of the first bank?

A. That is 606 feet along that road.

10 Q. How many other cross-sections have you delineated from the top of the bank at the road to the top of the opposite bank?

A. Number 4 runs across to the opposite shore.

11 Q. What is that distance?

A. That is 590 feet.

12 Q. Is there any other cross-section where the whole distance is delineated?

A. Number 6.

13 Q. What is that distance?

A. That is 559 feet. Number 9 is 578 feet and number 10 is 552 feet. That is the last one that runs across. That bank that runs across there is higher ground than the general level of the island; it falls off on the other side again, and there are sloughs over there.

Question by Mr. KUMLER:

14 Q. Is that the highest point on Green River Island?

291 A. Yes, sir. Well, the island is pretty near the same as it is on this side.

Questions by Hon. J. PROCTOR KNOTT:

15 Q. These banks are still visible, are they not?

A. Yes, sir.

16 Q. The timber on each bank leans in towards the bayou, does it not, as a general rule?

A. Right along on the bayou. Well, there are a good many of the trees straight and some leaning trees on both sides in there, and some on both sides are straight.

17 Q. You were asked about the width of the Ohio on the other side of the island. Is not the Ohio in the bend immediately south of that island cutting away the bank opposite to the island continually?

A. Yes, sir. Not down opposite the foot of the island, but opposite the tow-head, I guess.

18 Q. About how much has been cut off of that shore within the last 20 years?

A. I am not familiar enough with it to know that or to form an opinion about how much it has washed in there.

19 Q. Where the land has been washed away from the opposite shore hasn't there been an extensive deposit made on this shore?

A. Yes, sir; there has been some deposit along the island, along the lower end of it.

20 Q. Have you ever traced the meander lines by the act-
292 ual survey from the dividing line between sections 14 and 15 to the dividing line between sections 13 and 14 along the bank there?

A. No, sir.

21 Q. You are not able to say, then, how far it is from those meander lines that were surveyed in 1806 to the Ohio river as it is now above the mouth of this slough?

A. No, sir; I could not say.

22 Q. How much of that island is subject to overflow?

A. All of it.

23 Q. Have you observed any deposit on the general surface of the island from overflow besides that in the slough?

A. No, I have not. I have never paid very much attention to it right on the island.

24 Q. Now, what would you say was the average width from the first bank to the first bank from one end of the slough to the other?

A. Well, leaving all those places out that are like islands—you see those islands that are up in the middle there are up as high almost as the other bank.

25 Q. We understand those were actual islands at one time, as shown by an actual survey, but I am speaking of the bank on the Indiana shore to the main bank on the island, including those islands.

A. Well, I expect those places I measured across would be
293 about the average, for towards the upper end of it the banks are not so well defined; it is level across there.

26 Q. Referring now to the map marked Exhibit C, what is the dotted line traced along what you marked as Green River Island intended to represent?

A. That is the high bank along the bayou on the island side.

27 Q. Now, I notice at No. 9—between that dotted line and what you designate as the bayou—there are two dotted marks; what are they intended to represent?

A. They are the slough that is there or has been there—a depression there.

28 Q. Indicating that at one time there has been an island there?

A. That is what it seems to me to indicate—that there were islands there.

29 Q. Now, referring to No. 7, I see two light dotted lines again; what do they represent?

A. The same thing—a depression in the ground there.

30 Q. Now, at No. 2 the same character of lines are found; are they intended also to represent a slough?

A. Yes, sir. Well, it is a low place; there is no slough there now.

31 Q. From the margin of what you represent there by the yellow color as the bayou up the road on one side and the dotted line representing the first bank on the other side, what is the con-
294 dition of the ground? Is it in a state of cultivation or not?

A. Well, most of it is; in some places it is not; in a few

places in the bayou it is not in cultivation, but as a general thing it is in cultivation.

32 Q. Is it in cultivation on both sides?

A. Yes, sir; and in the middle of the bayou in some places.

33 Q. For a number of years that has been the case, has it not?

A. I think it has.

Re-examination.

Questions by A. H. SNOW, Esq.:

34 Q. Referring to the map marked Exhibit C, here is the character you have spoken of as the bank represented by the dotted lines on the island side of the bayou; you may explain what that is.

A. It is a raise in the ground about as high and in some places it is a little bit higher than the road, and from the island side it slopes off from that. It is a kind of a ridge there. It would be more properly called that, I guess.

35 Q. What is the average width of this ridge represented by the line on the island side of the bayou on top?

A. I think probably 30 or 40 feet.

36 Q. What is the character of the land between the ridge represented by the dotted line on the island side of the bayou and the road; is it in regular terraced form or cut out and irregular, or what is its condition?

295 A. In some places it slopes right down to the bayou, and in other places it is like it had been cut out or washed out.

37 Q. What is the character of the land on the island side of the ridge represented by the dotted line on the island side of the bayou?

A. There are sloughs running across the island generally nearly the same direction as the river and the bayou that have ridges up on either side and run down into a depression and then up onto another ridge—about the same character as the ground back on the Indiana side.

38 Q. This small ridge represented by the dotted line on the island side of the bayou is, as I understand it, higher than the land on either side of it; is that so?

A. Yes, sir.

39 Q. What do you mean exactly by your statement just made that the spaces included between the bayou and the double dotted line on map C are islands?

A. Well, the ground between those lines is almost as high as the land on the road—that is, either bank—and slopes off both ways.

40 Q. Are or are not the swales represented by the double dotted line of the same general character as the other swales outside of the place included between the dotted line representing the ridge and the road on map C?

A. Yes, sir; they just look like sloughs, like the balance of them.

296 41 Q. Why do you take the dotted line representing the ridge on map C as the boundary in your cross-section map?

A. Well, I ran a level across to get ground about the same height as the road. That didn't go all across the high bank.

42 Q. Was it your intention to obtain merely the highest point—the highest and most convenient points, merely—in making your cross-section map?

A. Just to see about the relative level. There was no water at the bottom of that bayou and the ground around it. I thought it would show better to take those points and the road running across than to take the land about the same level as the road.

43 Q. Does this ridge represented by the single dotted line on map C on the island side of the bayou represent any line of heavy timber or anything of that kind, or is there heavy timber on either side of the dotted line?

A. Down towards the upper end there is no timber along it, but down at the lower end there are a good many trees left standing yet along that bank.

44 Q. Is the heavy timber on both sides of the dotted line on map C?

A. They have been nearly all cut away except what stood on the bank close to the bayou. It has been most all cut off on the other side.

45 Q. Does the dotted line on map C to any extent repre-
297 sent any line of heavy timber?

A. No, sir; not at that upper end; there is no timber along there.

46 Q. It has nothing to do with the comparative size of the timber?

A. No, sir; except at the lower end there are some trees left standing along there that was marked on the map, but at the upper end of it there is no timber there.

Recross-examination.

Questions by Hon. J. Proctor Knott:

47 Q. About how far will you indicate on that map do the trees still stand along that dotted line?

A. The trees stand all the way up from the mouth and along here (indicating).

48 Q. Now, do you say there are no trees higher up than those you have delineated on that map there?

A. Not right along the bank. There are a few trees at the upper end, but most of the trees along that road have been all cut out.

49 Q. Are there not a number of dead trees scattered along that line nearly the whole way up?

A. There may be a few along the line, but the most of them are down toward the bayou, inside of the line, that are there yet.

Questions by Mr. Snow:

30 Q. Is there any terrace formation now visible on either side of the bayou?

298 A. No, sir; I would not call it terrace formation. It is

just the same as it is all over that country there—slough going through and ridges up between the sloughs.

51 Q. Are there any definite first and second banks now visible on the bayou?

A. No, sir; not any first and second banks.

Questions by J. PROCTOR KNOTT:

52 Q. Taking that line you marked there with the yellow paint is the ground on a dead level with or lower than the ground between the boundaries of that yellow line and what you put down as the road?

A. As a general thing it slopes right down to the bayou.

53 Q. Now the bed of the bayou is lower than that slope, is it not?

A. Yes, sir.

54 Q. Are there not many places along there where there is a level bottom, with tolerable abrupt banks?

A. No, sir; I do not think there is any place where it is level bottom.

And further the witness saith not.

299 Mrs. PAULINA MCALLISTER, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by D. B. KUMLER, Esq.:

1 Q. What is your name?

A. Paulina McAllister.

2 Q. What is your age?

A. 87 years last March.

3 Q. How long have you lived in Indiana?

A. I have lived here since 1820; well, I think 1819, but I don't exactly remember the day.

4 Q. When did you first become acquainted with what is known as Green River Island?

A. I could not exactly tell, I do not think, because, you know, there have so many things transpired I could not exactly tell what time, but I could tell what time we moved to the mouth of Green river.

5 Q. When did you move to the mouth of Green river?

A. It was in the fall of 1832; it was in the year 1832 and before the high water.

6 Q. Was it before the flood of 1832?

A. Before the flood of the same year. It came up the very same year that we went to the river. That is my very best recollection.

300 7 Q. Did you move on the island in 1832?

A. I never lived on the island. I lived on the Green River farm, right opposite the mouth of Green river.

8 Q. Do you know who owns the farm now?

A. No; I do not. It passed from my hands into the Aikens' after my husband died, and it was divided up, and so on. It was sold.

9 Q. After the year 1832, in the summer time or when the water was low in the Ohio river, what was the condition of the bayou?

A. Well, as far as I could tell you, in low water it was always dry and always passable, as well as I can remember now.

10 Q. How many places was it passable?

A. That is what I could not tell you, because while I was living there *and* people were passing backward and forward, and those little things you forget.

11 Q. Can you state about how many places it was passable?

A. Oh, no; because it was passable all along. I never knew anything else but that it was being passable all along. I never knew of any little holes to stop the way of people passing and repassing in low water when it was passable, you know.

12 Q. How was it passable—by teams and wagons?

A. I never knew any other way. I never heard of any hindrance of their going over just as they pleased.

301 13 Q. Could people walk over?

A. Oh, yes, sir; walking or driving.

14 Q. When you say the bayou went dry in the summer do you refer to the years 1832 and subsequent years?

A. To my recollection it was always dry unless there was a flood, unless there was a rise in the river.

15 Q. And was that from the time you lived up there?

A. We lived there five years and it was always about the same thing, I think.

16 Q. You lived there from 1832 to 1837?

A. Yes, sir.

Cross-examination.

Questions by Hon. J. Proctor Knott:

17 Q. In low water, I understand you to say, the whole bed of the slough was dry?

A. Well, that is what I always thought and I always supposed—always heard of its being dry. People were going and coming all the time, and I never heard anything else but what it was passable all the time. Those are little things, you know. I never heard anything else except that it was almost always passable in dry weather.

18 Q. When the water was very low there was no water in the chute at all?

A. No; I think not. I did not pass by there often, but that is my impression, because people were coming and going all the time.

302 19 Q. You lived on the other side of the Ohio river?

A. On this side of the Ohio river; right at the point; right at the ferry. There was a great deal of passing backwards and forwards at the time. The McClains can tell you all about this; they had some hands—negroes on the island. They used to come over on Sundays and to sell their tobacco. They worked hands there.

20 Q. Who was it that worked negroes on that island?

A. The McClains.

21 Q. Were they slaves?

A. Yes, sir; they worked negroes there—slaves.

22 Q. The negroes' quarters were on the island, were they?

A. I suppose so. They lived there and worked the farms.

23 Q. To whom did the island belong to at that time—Indiana or Kentucky.

A. Well, I could not tell; that was a disputed thing always—always talked of; as long as I remember it was talked of. We made claim to it, and people said it ought to belong to Indiana. People used to talk that way; and the white people used to live there and the negroes.

And further the witness saith not.

Whereupon, at the hour of 4 o'clock p. m., the further taking of these depositions was adjourned until to-morrow, Tuesday, September 11th, 1888, at 10 o'clock a. m.

303 TUESDAY, *September 11th*, 1888—Ten o'clock a. m.

The parties met pursuant to adjournment.

Present: The same as on yesterday. The taking of these depositions was resumed as follows:

EDWIN MCJOHNSTON, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by Mr. A. H. SNOW:

1 Q. What is your name?

A. Edwin McJohnston.

2 Q. What is your age?

A. Sixty-five the third day of this month.

3 Q. Where were you born?

A. I was born in this county.

4 Q. In what part of this county?

A. About ten miles right north of Evansville.

5 Q. Where is the next place you lived after the place where you were born?

A. We moved from there to the McJohnston farm; that is now in the eastern suburbs of this city.

6 Q. How near is the McJohnston farm to Green River Island?

A. Well, a mile or a mile and a quarter.

304 7 Q. How long did you live on the McJohnston farm?

A. I lived about thirteen years.

8 Q. Between what years was that?

A. Between the fall of 1831 and the fall of 1845.

9 Q. What was your occupation while you were living on the McJohnston farm?

A. I was a boy, working a little at everything upon the farm—clearing and teaming.

10 Q. What was the character of the teaming work that you did during those years?

A. Well, in those early days we drove oxen most of the time—I did. In the winter season I hauled a good deal of wood to town, and in the summer I hauled corn to Indiana.

11 Q. Where did you haul the corn?

A. Our corn was nearly all raised in what we called the bottom. I hauled corn off the island.

12 Q. What island do you mean?

A. Green River Island.

13 Q. Did you haul corn between Green River Island and the McJohnston farm?

A. Yes, sir; hauled more or less every year after I got big enough to drive a team. After I got thirteen, I guess, I could drive a yoke of oxen.

14 Q. Were you familiar with Green River Island?

A. Yes, sir; I hunted cattle all over it.

305 15 Q. What was the condition of the Green River Island bayou channel between the years 1831 and 1845, in the summer and in times of low water?

A. While it was always called the bayou, we never—I started from home with my team, and we had two main crossings; there were other places they crossed with teams, and empty wagons could drive across, but there were two main crossings. One we called the Aidelott crossing; it is now known as the Angel crossing—Angel on the island and Aidelott on this side. That is where we did most of our hauling, because the banks were a little the more sloping and easiest of access. Another place we crossed and hauled loads across was a mile or two above.

16 Q. Were there other places where a person could cross dry-shod in dry seasons?

A. Well, I have no recollection; of course, I do not remember much about it, only the general appearance of the bayou. There were places where the water stood and where we used to go fishing occasionally.

17 Q. How wide was the bayou proper between the years 1831 and 1845?

A. The bayou proper? Well, from twenty-five to forty feet—that is, from what we called bank to bank.

18 Q. Was there or was there not any timber growing between the bayou proper and the county road?

306 A. Yes, sir; there was timber on this side—on the Indiana side. There was timber all along.

19 Q. Did that timber extend up to the bayou proper or not?

A. Well, the timber—from the road to the bayou. The road was a good piece off—that is, I will say seventy-five yards in places and maybe a hundred and fifty yards in places. My recollection is that an island stood there, or higher ground, and the slope from where the water was in high-water season to our road was a good piece—varied from seventy-five yards in places to one hundred and fifty yards in others, where the bayou would make a little turn. On that ground between the channel—what we understood as the channel—and the road was timber.

20 Q. What was the character of this timber between the bayou proper and the county road?

A. There were sycamores, cotton-woods, and some maples, and, I think, a good many of what we called haw trees. I remember of gathering haws.

21 Q. How large were these trees?

A. Some of them were large trees. The sycamore trees were large, and the maples—some of the maple trees—were good size. I reckon all the way from a foot up to two and a half, and the sycamores were larger.

307 22 Q. Were there any dead trees among them?

A. Yes, sir; there were some dead sycamores. I remember one or two dead sycamores that hogs used to bed in.

23 Q. How large were those dead trees?

A. Well, of course, they were swelled abutments. I suppose a man could turn a five or six feet hand-spike inside. I remember driving along sometimes and a hog would be bedded in there and run out. The timber varied in size. I suppose it had been there a great many years.

24 Q. Did this timber extend close up to the bayou proper?

A. It grew down so that some hung over the bayou, as it does in all of those streams.

Cross-examination.

Questions by Hon. J. Proctor Knott:

25 Q. What proportion of the year did the water run through that channel?

A. My recollection is not clear whether there was a continuous stream of running water or not. If you will allow me, I will give you why I answer the question that way. My brother used to buy boats at Cincinnati and float them down, watching the river when it would get high enough to get them into the head of the bayou, sometimes for protection and sometimes to save hauling corn a good distance, and I remember a time or two that he had to take
308 his boat back into the river, but if he could get it over the bar and drop it into the bayou and it did not fall he could get it out below; but if he could not he would take it back into the river, and then I would have to haul the corn a mile or two, when we would haul right down off the bank; so I would not say under oath whether I knew or did not know whether any continuous running water was there. My recollection is that at these fords in sum-

mer and fall they were dry. I believe I could have walked across any time. I used to go there and hunt in the fall season, and I believe I could have walked across without hunting any dry place. That is my recollection.

26 Q. There were two of those fords?

A. Two where I used to cross—Aidelott's and what we called the Garrett ford.

27 Q. Could you locate those fords with reference to the section lines?

A. No; I could not. You see when I went down there I was a boy, and my observation was as a teamster and as a boy only. I could tell where these men worked his land and raised his corn, but I don't know any of the county line.

28 Q. What was the average distance along that bayou from the high bank next to the road to the high bank on the island side?

309 A. I think it varied from seventy-five yards to one hundred and fifty yards, because in there where the road was one or the other was not exactly straight. I know that some places between where I had looked down to where the water was to the center of the water in the bayou and the road it was a good piece across; other places I would get nearer to it; and I think the appearance of the ground will show about that condition of things to-day. It is filled up in a regular way.

29 Q. What was the condition of these high banks on either side of this bayou; were they comparatively abrupt?

A. On the Kentucky side it was more so than on the other side. There was no regular road on the Kentucky side, and I expect that was one reason that there was other places I could have crossed, but I could not get to them because we had no road and the banks were above. On the Indiana side you could get down almost anywhere on the bank, except for a drift pile. There was some drift piles in there.

30 Q. The banks on either side, however, were very distinctly visible?

A. Oh, yes, sir; where the road was was a bank. From the bayou here, in most cases, we came up on a kind of table-land, and

310 as you approached the road there was another little elevation that the road was on—in some places three or four feet high, in other places more; but you could not call it a second bank particularly, because there was no water—only in the one bed, as we called it, of the bayou.

31 Q. That would be owing to how high the water would be?

A. Yes, sir; I think so.

32 Q. The water might get up high enough to reach those banks?

A. Well, it got up high enough to come all over the bottom so that we had to bring all our stock out.

33 Q. So that the distance from the road to the top of the bank, on either side, to the edge of the water would be in proportion to how high the water was?

A. It just depended on the stage of the water; yes, sir.

34 Q. Then, if the water at a certain stage of height would come to the outside banks that would be the first bank, would it not?

A. The first bank in the road.

35 Q. And as it would recede and get down into a narrow channel that would be called the second bank?

A. That is what we call the bayou.

36 Q. I understand that; but you would call it the second bank if the other was the first one, would you not?

A. Well, I don't say there were two banks.

311 37 Q. I know you did not. Well, now suppose between these first banks and what you persist in calling the bayou there was some timber?

A. There was timber as far back as I can recollect; fifty odd years ago there was timber.

38 Q. What was the character of that timber?

A. Some sycamore, and as it got nearer the bayou there was more, but along the bank near the road—what we called the bank in my boyish way, thinking of it now—were those hollow sycamore trees, and you would find them all over the bottom, in the field; there were sycamore trees in the corn-field. There were some maples and some cotton-woods—some quite large cotton-woods and others quite small; then there were a good many haw trees, black and red haw trees, where I used to gather haws when a boy.

39 Q. Those maples and cotton-woods you say were about a foot to a foot and a half in diameter?

A. They would vary from six inches up to three feet; some were large—three feet, I think. I have cut down dozens, and they varied in size. Some cotton-woods that grew in that table-land there—well, they made rails of them along about that time. I have cut and made rails—split them—right there.

40 Q. Cotton-wood is a very rapid grower, is it not?

312 A. I suppose it is. I never had any experience in cotton-wood, only my observation there. It is a soft wood.

41 Q. The maple is also a very rapid grower, is it not?

A. That would depend upon the character of the soil. The hard maple is not. The sugar maple is not. No; I don't believe maple is. It is soft—the silver maple it grows pretty rapidly. I have set out shade trees in town here of both kinds. They outgrow the sugar maple some.

42 Q. What was the variety of maple in that bottom?

A. What we used to call a soft maple.

43 Q. Now, is it not a fact that the soft——

A. (Answer interrupting.) No; correct that about the sugar tree. Sugar trees don't grow in bottom land.

44 Q. Is it not a fact that the soft maple you speak of is a very rapid grower?

A. I don't know that it is more so than the other. I don't think it is as rapid as the cotton-wood.

Re-examination.

Questions by Mr. A. H. SNOW:

45 Q. I understand you to say that your brother was in the habit of floating down flat-boats?

A. Yes, sir.

46 Q. He used to watch the bayou to see when it was the proper time to float them into the bayou, did he?

313 A. He would watch the rise of the water.

47 Q. How much water would it take between the years 1831 to 1845 to have water run over the head of the bayou?

A. I could not tell that. There was a bar—I remember that—stretching out into the river and the water had to get high enough to float them in over that.

48 Q. About how many feet would it take to make the water flow into the bayou over the head at that time?

A. I could not tell that.

49 Q. I mean above low-water mark?

A. I never knew what low-water mark was. Low-water mark in a very dry season is very low.

50 Q. Take the lowest low-water mark?

A. I did not run the Government gauge at that time and never since, and I could not tell. Sometimes the river would get so low they could pretty near ford it any place. Up here at Scuppertown the teams would wade it; so that I could not tell.

51 Q. Would it, in your judgment, take twenty feet above low-water mark?

A. It would take considerable of a rise; I could not tell you how much. I will answer every question that you ask that I can,

314 but I do not believe either of you want to draw me into an answer not in keeping with my oath, and I will be particular about what I say. I could not answer that in round words.

52 Q. It would take considerable of a rise, I understand you to say?

A. I think it would, because he would have to wait until near winter; until the fall rains would set in sufficient to raise the waters above, and he would watch his time. I know he has left me on the boat to watch it after he came way down before it could go in.

53 Q. He would have to wait until the fall rains before he could ever get into the mouth of the bayou?

A. Yes, sir.

54 Q. What was the character of what you called the bank of the bayou on the island side; was that a bank coming down from a table land beyond or was the ground behind that bank lower; was it a bank or really a ridge?

A. To give you the thought in a word or two, the slope was more abrupt, and corn grew much closer to what we called the bayou proper than it did to the road on either side.

55 Q. But I am speaking of the land behind the bank on the

315 island side; was that higher or lower than the bank?

A. On the Indiana side?

56 Q. No, on the island side; was it higher or lower than the bank?

A. I am not familiar enough with the lay of the ground. I know there were sloughs on the island that could not be filled at all: wet marshes on the island. You could see where the weeds and the corn would be drowned out at times by heavy rains; so that while it was an island, it was uneven in its surface.

And further the witness saith not.

316 STATE OF INDIANA, *County of Vanderburg:*

I, Harold Taylor, a notary public for the State of Indiana, and an officer authorized to take depositions by the laws of the State of Indiana, hereby certify that the above-named Jehu A. Angel, Hampton H. Angel, James Hayhurst, Milton H. Tribble, John M. Sampson, Jenkins Hugo, William Reavis, James D. Saunders (recalled), Paulina McAllister, and Edwin McJohnston, witnesses, were first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said depositions were reduced to writing by me; that the respondent was present by its attorney, J. Proctor Knott, Esq., and that said depositions were taken at the office of the clerk of the United States circuit court, in the city of Evansville, county of Vanderburg, and State of Indiana, on the 10th and 11th days of September, 1888, between the hours of eight o'clock a. m. and six o'clock p. m. of said days, and that the several exhibits herein appearing were by me duly attached hereto.

In testimony whereof I have hereunto set my hand and notarial seal this the 25th day of September, A. D. 1888.

HAROLD TAYLOR,
Notary Public.

317 (Endorsed:) Supreme Court of the United States. October term, 1888. No. 2, original. The State of Indiana, complainant, *vs.* The State of Kentucky. Evidence for complainant in chief. Filed February 6, 1889.

And on the same day, to wit, on the 6th day of February, A. D. 1889, the evidence for complainant in rebuttal was filed, in the words and figures following, viz:

318 *Stenographer's Transcript.*

STATE OF INDIANA,
Vanderburgh County.

In the Supreme Court of the United States.

STATE OF INDIANA, Complainant,
vs.
STATE OF KENTUCKY, Respondent. } No. —.

Complainant's testimony in rebuttal, taken at Evansville, Indiana, September 26th, 27th, and 28th, 1888.

Appearances: For plaintiff, McDonald, Butler & Snow, Daniel B. Kumler; for defendant, P. W. Hardin, J. Proctor Knott, R. H. Cunningham.

319 & 320 (Stenographer's index omitted in printing. See gen'l index.)

321 In the Supreme Court of the United States.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY.

The respondent in the above-entitled cause is hereby notified that the complainant herein will take depositions of witnesses, to be used in evidence on the trial and hearing of said cause, on the 26th day of September, 1888, beginning at ten o'clock a. m., at the office of the clerk of the United States circuit court, in the city of Evansville, in the county of Vanderburgh, and State of Indiana, before an officer authorized to take depositions by the laws of the State of Indiana, and that the complainant herein will, if necessary, continue said taking from day to day, or pursuant to adjournments, until said depositions are completed.

Dated this 15th day of September, 1888.

McDONALD, BUTLER & SNOW,
DANIEL B. KUMLER,
Solicitors for Complainant.

We acknowledge service of the above notice this 21st day of September, 1888.

J. PROCTOR KNOTT,
For Resp't.

322 In the Supreme Court of the United States.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY.

The respondent in the above-entitled cause is hereby notified that the complainant herein will take depositions of witnesses, to be used in evidence on the trial and hearing of said cause, on the 26th day of September, 1888, beginning at ten o'clock a. m., at the office of the clerk of the United States circuit court, in the city of Evansville, in the county of Vanderburgh and State of Indiana, before an officer authorized to take depositions by the laws of the State of Indiana, and that the complainant herein will, if necessary, continue said taking from day to day, or pursuant to adjournments, until said depositions are completed.

Dated this 15th day of September, 1888.

McDONALD, BUTLER & SNOW,
DANIEL B. KUMLER,
Solicitors for Complainants.

We acknowledge service of the above notice this 21st day of September, 1888.

P. W. HARDIN,
Att'y Gen'l of Ky.

323 In the Supreme Court of the United States.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY.

The respondent in the above-entitled cause is hereby notified that the complainant herein will take depositions of witnesses, to be used in evidence on the trial and hearing of said cause, on the 26th day of September, 1888, beginning at ten o'clock a. m., at the office of the clerk of the United States circuit court, in the city of Evansville, in the county of Vanderburgh and State of Indiana, before an officer authorized to take depositions by the laws of the State of Indiana, and that the complainant herein will, if necessary, continue said taking from day to day, or pursuant to adjournments, until said depositions are completed.

Dated the 15th day of September, 1888.

McDONALD, BUTLER & SNOW,
DANIEL B. KUMLER,
Solicitors for Complainant.

We acknowledge service of the above notice this 19th day of September, 1888.

R. H. CUNNINGHAM,
For Respondent.

324 Depositions of Ira Fairchild, Anthony Hawkins, Sebastian Henrich, Commodore Kelley, James D. Parvin, William Reavis, James D. Saunders, Louis Sihler, witnesses produced and sworn to before me, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, at Evansville, in the county of Vanderburg, State of Indiana, at the office of the clerk of the United States circuit court, in said city of Evansville, county of Vanderburg and State of Indiana, on the 26th, 27th, & 28th days of September, 1886, pursuant to the annexed notice and stipulations.

These depositions were taken on the part of the complainant in a certain action now pending in the Supreme Court of the United States, wherein The State of Indiana is complainant and The State of Kentucky is respondent.

325 WILLIAM REAVIS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. You are the same William Reavis who testified in this case a few weeks ago?

A. Yes, sir.

2 Q. You may state if you remember whether in the year 1832 and in the years succeeding there was in the Green River Island bayou a ferry; and, if so, what was the nature and character of the ferry.

A. Yes, sir. In the spring of 1832, in the month of March, I and my mother visited my sister, then living on the island, and we crossed in a ferry, an old-fashioned flat. It would take horses and small vehicles. The river then was at flood height, higher than ever previously in the memory of the oldest inhabitants. Now, if you wish to know anything else in regard to the ferry?

3 Q. You do not quite answer my question. I will ask the notary to read it to you, so that you may fully understand it and answer it.

The notary read the question as requested.

A. I understood that the ferry was there for accommodation. I know that no charges were made to myself or mother at the
326 time we crossed with two horses. I know furthermore that the neighbors were in the habit of crossing and recrossing in that ferry with their horses without any one charging them a cent for the same. This I know was the usage in the spring and summer and early autumn of 1832.

4 Q. You may state if you know at what seasons of the year this ferry-boat was used.

A. It was only when the river was at flood height; in the spring,

generally. There was seldom any occasion for the use of it excepting in the months of February, March, or April.

5 Q. What was done with it during the summer?

A. Oh, it lay high and dry on the sand bar. I saw it during the summer of 1832 on a sand bar lying there with no attention paid to it.

6 Q. Was there more than one ferry in the bayou in the year 1832 and the years succeeding it?

A. If there was I don't know anything about it. I will state this, however: There were occasionally skiffs and canoes at two or three other crossings, which were only used during high water and used for similar purposes to that which the ferry was used, of which I have already made mention.

7 Q. What was the character of the ferry-boat?

327 A. The ferry-boat was a flat, what we call an old flat, fashioned after the old ferry-boats that were in use fifty and sixty years agone on the Wabash and White rivers.

8 Q. How was it propelled?

A. Propelled by poles, and it had paddles; but generally it was propelled by poles, unless they came to a place where the water was too deep. In high water such places were sometimes approached and then they had paddles—temporary paddles; they would pick up pieces of boards or anything.

9 Q. You do not mean paddle wheels?

A. Oh, no; such paddles as a skiff and old-fashioned canoes would use.

10 Q. Do you know what person or persons owned this ferry-boat; and, if so, who were they?

A. I do not know the owners; Mr. Abram Franceway, one of the old farmers in the bayou, either himself or some of his tenants living in close proximity to this ferry, and he or his hands who worked upon his farm assisted in controlling it part of the time, and part of the time there were parties—Mr. Garrett, who lived opposite the bayou—he and his family assisted occasionally and my brother-in-law, B. G. Cochran, assisted occasionally. From him and those who lived in the bayou I learned that that ferry was kept there just for accommodation when the river was at flood height.

328 11 Q. Did or did not those who wished to cross the ferry attend to the ferry, or was there a ferryman?

A. Why, those who crossed always helped to work the ferry across. There were no particular parties to attend to the ferry; just any one that happened to be crossing. For instance, I will explain now: There was a skiff, an old canoe, that laid there, and if a man came along on a horse—there was a canoe generally on each side for any neighbors, and if any of the neighbors came along on a horse and wanted to cross over—I remember seeing some instances of that sort—they would take the dug-out and get the ferry if it was off on the other side and bring it over. They did that from each side of the bayou and would work themselves over. If any man was standing around on the bayou and they needed a little assistance they would call to him to work.

12 Q. Have you ever been acquainted with William Whitlesey?
A. Yes, sir.
13 Q. Who formerly lived in the city of Evansville and Knight township?
A. Yes, sir; I knew him well during his lifetime.
14 Q. Is he now living or is he dead?
A. He is dead.
329 14 Q. Have you ever been acquainted — Jonathan Cochran, who formerly lived in or near Knight township, Vanderburgh county?
A. Yes, sir; I knew him well.
15 Q. Is he living or dead?
A. He is dead.
16 Q. Have you ever been acquainted with William Wagner, who formerly lived in or near Knight township, Vanderburgh county?
A. Yes, sir.
17 Q. Is he now living or dead?
A. He is dead.
18 Q. Have you ever been acquainted with Isaac Knight, who formerly lived in or near Knight township, Vanderburgh county?
A. Yes, sir.
19 Q. Is he now living or dead?
A. He is dead.
20 Q. Have you ever been acquainted with George Linxwyler, who formerly lived in or near Knight township, Vanderburgh county?
A. Yes, sir.
21 Q. Is he now living or dead?
A. He is dead.
22 Q. Have you ever been acquainted with Absalom Vann, who formerly lived in Knight township, Vanderburgh county?
330 A. I was never particularly acquainted with Mr. Vann.
23 Q. Do you know whether Mr. Vann is now living or dead?
A. If such a man ever lived there he is either dead or removed to parts unknown, so far as I know.
24 Q. Have you ever been acquainted with the father of Squire Vann, who now lives in Knight township, Vanderburgh county?
A. I think I have met with him, but no personal acquaintance. I knew him by reputation, but had no personal acquaintance.
25 Q. Do you know whether Squire Vann's father is now living or dead?
A. My information is he is dead.
26 Q. Have you ever been acquainted with Mathias Whetstone, who formerly lived in or near Knight township, Vanderburgh county?
A. Yes, sir; knew him well.
27 Q. Is he now living or dead?
A. He died long since.
28 Q. Have you ever been acquainted with Lewis James, who formerly lived in or near Knight township, Vanderburgh county?

A. Yes, sir.

29 Q. Is he now living or dead?

A. He is dead.

331 30 Q. Have you ever been acquainted with Clark McAllister, who formerly lived in or near Knight township, Vanderburgh county?

A. Yes, sir; I knew him.

31 Q. Is he now living or dead?

A. He is dead.

32 Q. Have you ever been acquainted with Jesse Lane, who formerly lived in or near Knight township, Vanderburgh county?

A. Yes, sir; I knew him well.

33 Q. Is he now living or dead?

A. Dead.

34 Q. Have you ever been acquainted with John Parker, who formerly lived in or near Knight township, Vanderburgh county?

A. Yes, sir.

35 Q. Is he now living or dead?

A. He is dead.

36 Q. About how many people were there living on Green River Island, so called, in the year 1832?

A. I could not tell just how many Parkers lived there; some three or four families of Parkers, all married; the old man, married, and two or three sons and several daughters; and Mr. Franceway lived there, and McAllister lived in Knight township, in that neihgborhood, and Mr. Cochran, my brother-in-law, and Johnathan Cochran, who lived there, and Jesse Lane and

332 Mr. James lived there. There were several others that I knew that lived there, but I could not mention all their names unless they were called.

37 Q. Approximate how many persons were residing on the island in 1832 who were of age—who were twenty-one years old—that is, those who were voters who lived on the island.

A. Well, I think if I were to study some time I might make out twenty-five or thirty; maybe more than that. I could not tell at this late date.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

38 Q. At the time you went over to the island in 1832, that you speak of, was the island itself covered with water?

A. No, sir; the island itself was not all covered; part of it was covered; the lower portions of the bayou were covered.

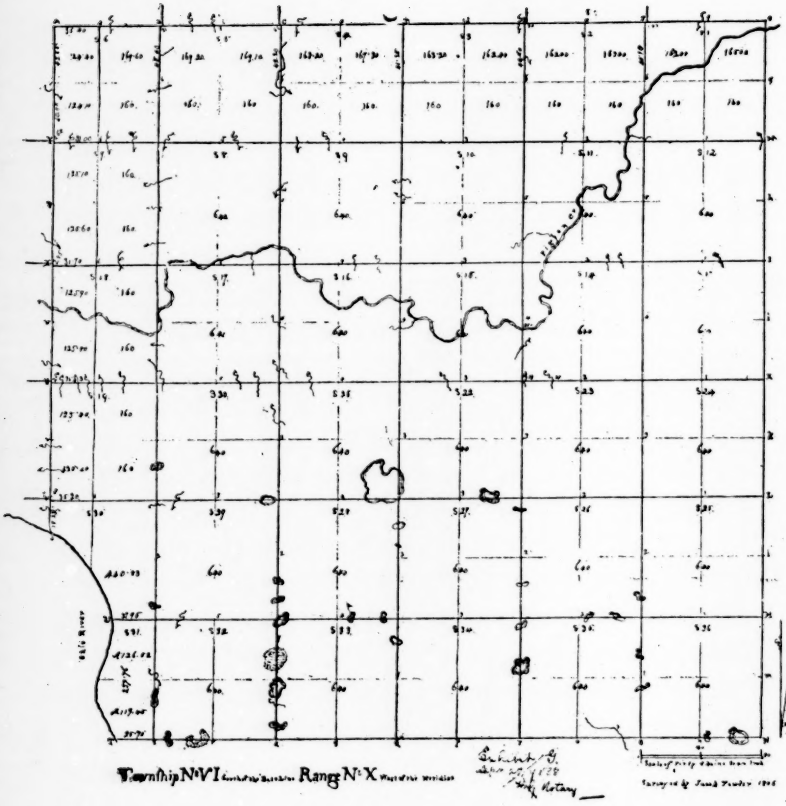
39 Q. Was the State road or Indiana bank covered with water?

A. Yes, sir; we had to go around. There was a way of going around where the land was higher. The road on the bank of the bayou was all covered with water; the most of it was.

40 Q. The lower parts of the road?

A. Yes, sir; as you went on the bank and where you came

Exhibit G.



333 from one of those low places you would have to go around little by paths to get on the higher ground.

41 Q. Is the Jesse Lane you speak of the same one who about 1835 got a patent from the State of Kentucky for land on the island?

A. I could not tell just when he got his patent, or whether he got one at all; I can only say he lived there then.

42 Q. Was he the only Jesse Lane that lived on or about the island in your recollection?

A. Yes, sir; at that time in 1835. He had a child called Jesse, who still lives, who was then a small—a baby, I think, in his mother's arms—I think at that time. Well, he was not born in 1832; he was born in—I don't think he was born at all until 1836 or 1837. There was no other Jesse Lane there to my knowledge.

And further the witness saith not.
(Signature waived.)

Whereupon the further taking of these depositions was adjourned until Thursday, September 27th, 1888, at two o'clock p. m.

334 THURSDAY, *September 27th*, 1888—2 o'clock p. m.

The parties met pursuant to adjournment.
Present: The same as on yesterday.
The taking of the depositions was resumed as follows:

Mr. SNOW: I offer in evidence certified copies of the original United States survey of 1806. The notary will please mark them as Exhibits "G" and "H," and attach them to the testimony.

The papers above referred to being in the words and figures following, to wit:

335 (Here follows diagram marked Exhibit G.)

STATE OF INDIANA,
OFFICE OF AUDITOR OF STATE.

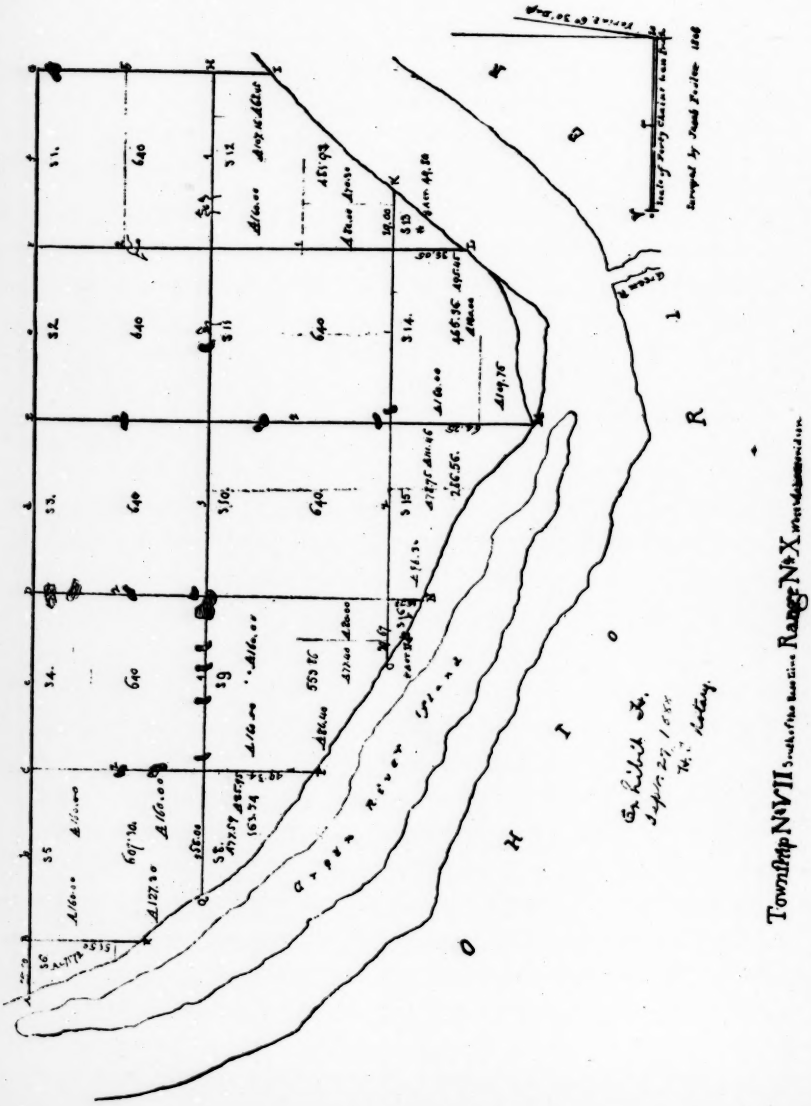
I, Bruce Carr, auditor of state of the State of Indiana, do hereby certify that the above and foregoing tracing is a full, true, and complete copy of the plat of the congressional survey of township six (6) south, of range ten (10) west, of the 2nd principal meridian, Indiana, made under authority of the Congress of the United States in the year 1806, and showing or purporting to show a portion of the Ohio river, as the same appears of record in my office and of which I am the legal custodian.

I further certify that the plat from which said copy is taken is the original plat of said survey of 1806.

Witness my hand and official seal this 24th of September, 1888.

BRUCE CARR,
Auditor of State.

Exhibit H.



339 JAMES D. SAUNDERS, recalled by the complainant as a witness in rebuttal, deposes and says as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. You may examine the field-notes which are a part of Exhibit "Y," and state whether or not such field-notes are in the ordinary form of surveyors' field-notes, and whether or not you as a surveyor, from your experience, are capable of understanding and explaining them.

A. Yes, sir; they are in the ordinary forms used in Government surveys and I can explain them.

2 Q. Have you, in your occupation as a surveyor or not, been familiar with the Government surveys?

A. Yes, sir; I have.

3 Q. And the field-notes attached thereto?

A. Yes, sir.

4 Q. You may explain to what the first, second, third, fourth, and fifth pages of the field-notes refer?

A. They refer to the section corners and half-mile corners placed on the interior of township number 7 south, range 10 west, of the second principal meridian, and to fractional section corners
340 placed along the Ohio river.

4 Q. Do they or not give the cross distance between the section corners?

A. Yes, sir; give cross distances, except along the river. In these pages they do not give that.

5 Q. Turn to the page marked in pencil "1" on the field-notes and state to what that page and the succeeding page refer.

A. The first portion of page number 1 refers to the meander line on the Ohio river, being part of township number 6 south, range 10 west, and the remainder of that page 1 and also page 2 refer to the meander line along the Ohio river, in township number 7 south, range 10 west.

6 Q. Do or do not the field-notes show that the lines of the survey of 1806, nearest to the Ohio river, were meander lines?

A. Yes, sir; they are meander lines.

7 Q. Referring further to the field-notes, to what do the dates attached at the bottom of the paragraphs refer?

A. Refer to the time that the work was done.

8 Q. Does or does not the survey show that all the work, except in sections 1 and 12, was done in the month of April, 1806?

A. Yes, sir; it was all done in the month of April, except-
341 ing in sections 1 and 12, which was done the 13th of December, 1805.

9 Q. Do or do not the field-notes show that all the work of the survey of 1806 in the neighborhood of Green River Island was done in the month of April, 1806?

A. Yes, sir; all that section. One and twelve were not done during the month of April.

10 Q. In the month of April what is the ordinary condition of the Ohio river?

A. The Ohio river is general- pretty high in April, at a good stage of water.

11 Q. Is or is not that about the time of the spring floods, as a general rule?

A. Well, they do not come very regularly—high water. It is along generally in March and April; sometimes comes as soon as February. There is always high water in April.

12 Q. At a time of high water, would it or would it not be probable that Green River Island, so called, might appear to a surveyor as an island by reason of the water being to such a height that it might fill the bayou, and yet not overflow the surrounding land?

A. Yes, sir; between thirty and thirty-five feet above low water Green River Island would now appear as an island, and it would not overflow the adjoining ground.

342 13 Q. You may now refer to the map, which is made part of Exhibit "Y," and may measure it according to the scale marked upon the map, and give the width of the island, as shown on that map, at its widest point.

A. (After measuring the map.) The widest place appears to be about 18 chains wide.

14 Q. How wide would that be reduced to miles?

A. That would be 132 feet less than a quarter of a mile.

15 Q. Refer now to map marked Exhibit "C," and you may measure Green River Island on that map at its widest point, according to the scale on which such map was drawn, and state how wide the island is at its widest point.

A. Eighty-one chains wide.

16 Q. How wide is that reduced to miles?

A. One chain over a mile.

17 Q. You may refer now to the map marked "Z," and you may place over the map marked Exhibit "Z" the map marked Exhibit "H," the certified copy of the original survey of 1806, and you may state whether, on such comparison, the dotted line marked on the map marked Exhibit "Z" as "L. 1806," meaning the line of 1806, is the line of 1806 survey, as shown by the certified copy of the 1806 survey, marked Exhibit "H." And, if not, what is it?

343 A. It is not the line of the river; two lines are shown on that map. It is a meander line; what I would think it would be, the way it is shown there, and there is another line shown outside of it as the river line.

18 Q. Is or is not the upper line of the two the meander line, as shown by the ends of the section lines?

A. Yes, sir.

19 Q. From your experience with United States surveys, is or is not the lower line intended to represent the line of the river?

A. Yes, sir.

20 Q. Does or does not, upon this comparison which you are now making, the lower line on maps "H" and "Z" very nearly corre-

spond or approximately correspond with the line of the river as shown on the map marked Exhibit "Z?"

A. It comes very near it—not exactly; down near Green River Island it comes nearer it.

21 Q. Now, you may compare the map marked Exhibit "H" with the map marked Exhibit "Y"—that is, the certified copy of the original of the United States survey of 1806 with the certified copy of the photo-lithographic copy of the survey of 1806—and state whether or not the line below section 14, which you have stated was, in your opinion, the river line, is marked at all upon
344 the photo-lithographic copy.

A. No, sir; it is not marked at all.

22 Q. You may state, if you know, whether or not the Green River Island, as shown on the maps marked Exhibit "Y" and Exhibit "H," is a correct or an approximately correct representation of the island as it is at present; and, if not, you may state wherein is the difference.

A. It is not represented as wide as it is.

23 Q. How much narrower is it represented than it is at present?

A. On Exhibit "Y" it is about one-fourth of the width of the island, and on Exhibit "H" it is nearly one-half of its actual width—not quite.

24 Q. And how is the head of the island represented as compared with its present position?

A. The head of the island is a little more than a quarter of a mile further up the river than its actual position at the present time.

Mr. SNOW: I will pass this paper over to the notary to attach to the testimony. It is stipulated that it is to be taken in lieu of the original. It may be marked as Exhibit "I."

Mr. CUNNINGHAM: All objections to the paper marked Exhibit "I" on account of its being a mere copy are waived, other exceptions, if any, being reserved.

345 Mr. SNOW: That is right.

The paper above referred to being in the words and figures following, to wit:

346 I hereby certify that the following is a true copy from the description of Green river and Green River Islands, on page 75 of a book entitled "The Navigator; containing directions for navigating the Monongahela, Alleghany, Ohio, and Mississippi rivers, with an ample account of these much-admired waters, from the head of the former to the mouth of the latter, and a concise description of their towns, villages, harbours, settlements, etc.; with accurate maps of the Ohio and Mississippi. Sixth edition. Improved and enlarged. Pittsburgh. Published by Zadok Cramer, 1808."

"French Island, No. 73, channel left shore.

Three-Mile Island, No. 74, same side.

Green river, left shore.

This is a large water of Kentucky, and is navigable with a gentle current for about 150 miles. It rises in Lincoln county, and is 200 yards wide at its mouth.

Green River Islands, Nos. 75 and 76.

Here are two islands opposite each other, one of which is six miles long and has six or eight families settled on it; channel left side of both.

Red Banks.

At this place, which is included in Henderson's grant of 200,000 acres, a town is laid off called Henderson.

Owing to a remarkable bend in the river, though the dis-
347 tance from the mouth of Green river to this place by water is 25 miles, yet by land it is only called eight.

Red Bank Island, No. 77, channel right side."

And I further certify that the map hereto attached and marked D is a true copy, made by tracing, of map No. 11, contained in the book hereinbefore referred to and published at Pittsburgh in 1808.

And I do further certify that the book containing said extract on page 75, and said map No. 11, has been in the Library of Congress more than 20 years, having been acquired in the year 1866.

In witness whereof I hereunto set my hand this 24th day of September, A. D. 1888.

A. R. SPOFFORD,
Librarian of Congress.

CITY OF WASHINGTON,
District of Columbia, } *ss:*

Before me, James D. Maher, a notary public for said city and District, personally appeared Ainsworth R. Spofford, signer of the foregoing instrument of writing, and acknowledged the same to be his affidavit for the purpose herein set forth.

Witness my hand and notarial seal this 24th day of September, A. D. 1888.

JAMES D. MAHER,
Notary Public.

(Here follows diagram marked Exhibit I.)

348 25 Q. You may state what the map, which is a part of Exhibit "I," purports on its face to be.

A. A map "from page 77 of The Navigator, by Z. Cramer, 6th edition, Pittsburgh, 1808."

26 Q. You may state whether Green River Island and Green River tow-head are represented on that map approximately the same as they are at present.

A. Yes, sir; I think approximately they are. Green River Island is not exactly shown in the right place, but as near as you could tell they are about the same, on such a small scale as this.

27 Q. Does or does not that map show an island and a tow-head?

A. Yes, sir; shows an island and a tow-head—two islands.

Exhibit I.

D.

From Page 11 of The Navigator,
by Z Cramer.
6th Edition, Pittsburgh, Pa.
1808.

11

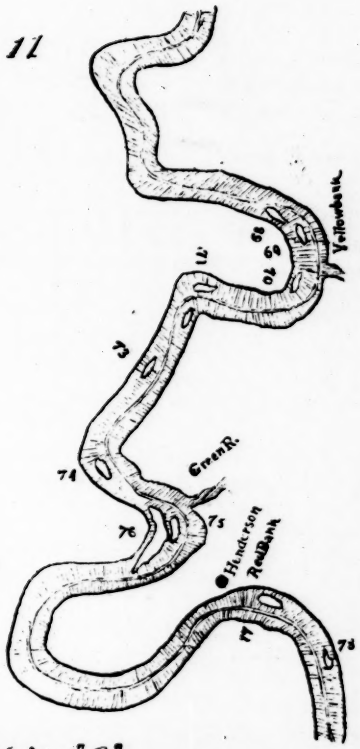


Exhibit "J"
Sept. 27, 1888
W. J. Notary

28 Q. Do or do not the maps marked Exhibit "H" and Exhibit "Y" show but one island?

A. Show but one island.

29 Q. In your opinion as a surveyor, judging from the map as drawn, marked Exhibit "H," was Green River Island, as represented on that map, surveyed or marked from any survey or was it placed upon the map from guess-work and with the intention of merely approximating in some degree its shape and position?

A. I think it was put on there just approximately, because
349 there is nothing in the field-notes, as far as I have seen of that part of the country, that says anything about Green River Island. There is nothing in the field-notes to locate the island from.

30 Q. What conclusion would you draw from the fact that upon the map, from the survey of 1806, the tow-head is not described?

Mr. CUNNINGHAM: I presume, of course, an objection is understood to all of this.

Mr. SNOW: Yes, sir.

A. I would think they did not pay much attention to the island, and they could not see the tow-head without going across the island, probably, at that time. They never went on the island at all and did not know there were two islands.

31 Q. That is your opinion, judging from the map?

A. Yes, sir.

Mr. SNOW: I will pass this paper over to the notary to attach to the testimony. It is stipulated that it is to be taken in lieu of the original. It may be marked as Exhibit "K."

Mr. CUNNINGHAM: All objections to the paper marked Exhibit "K," on account of its being a mere copy, are waived, other exceptions, if any, being reserved.

Mr. SNOW: That is right.

350 The paper above referred to being in the words and figures following, to wit:

351 I hereby certify that the following is a true copy of the title page of a book belonging to the Library of Congress, and which has been for more than 70 years in said library, having been acquired with the library of Thomas Jefferson in 1815:

"A topographical description of Virginia, Pennsylvania, Maryland, and North Carolina, comprehending the Rivers Ohio, Kenhawa, Sioto, Cherokee, Wabash, Illinois, Mississippi, etc; the climate, soil, and produce, whether animal, vegetable, or mineral, the mountains, creeks, roads, distances, latitudes, etc., and of every part laid down in the annexed map. Published by Thomas Hutchins, Captain in the 60th Regiment of Foot, with a plan of the Rapids of the Ohio, a plan of the several villages in the Illinois country, a table of the distances between Fort Pitt and the mouth of the Ohio, all engraved upon copper, and an appendix containing Mr. Patrick Kennedy's journal up the Illinois river, and a correct list of the different nations and tribes of Indians, with the number

of fighting men, etc. London: Printed for the author, and sold by J. Almon, opposite Burlington House, in Picadilly. MDCCLXXVIII."

And I further certify that the following is a true copy of
352 the author's preface of the said book, viz:

"*Preface.*

The map, which the following sheets are intended to explain, comprehends almost the whole of the country lying between the 34th and 44th degrees of latitude and the 79th and 93d degrees of longitude, and describes an extent of territory of about 850 miles in length and 700 miles in breadth, and one which, for healthfulness, fertility of soil, and variety of productions, is not, perhaps, surpassed by any on the habitable globe.

Those parts of the country lying westward of the Alleghany Mountain, and upon the Rivers Ohio and Mississippi and upon most of the other rivers, and the lakes (laid down in my map) were done from my own surveys, and corrected by my own observations of latitudes, made at different periods preceding and during all the campaigns of the last war (in several of which I acted as an engineer), and since in many reconnoitering tours, which I made through various parts of the country, between the years 1764 and 1775.

I have compared my own observations and surveys respecting the lakes with those made by Captain Brehn, of the 60th
353 Regiment of Foot (who was for many years employed as an engineer in North America), and I find that they correspond with more exactness than surveys usually do, which are made by different persons at different times, and I am happy in this opportunity of expressing my obligations to this gentleman for the cheerfulness with which he furnished me with his surveys and remarks.

It is fit also that I should take notice that in the account which I have given of several of the branches of the Ohio and Alleghany rivers I have adopted the words of the late ingenious Mr. Lewis Evans, as I found he had properly described them in the analysis to his map of the Middle Colonies: And as to that portion of my map which represents the country lying on the eastern side of the Allegheny Mountain, I take the liberty of informing my readers that my reason for inserting it was to show the several communications that are now made and others which may be hereafter easily made between the navigable branches of the Ohio and Allegheny rivers and the rivers in Virginia and Pennsylvania, which fall into Atlantic Ocean from the West and Northwest.

London, Nov. 1, 1778."

And I further certify that on page 26 of this book appears
354 a statement of which the following is a true copy:

"Buffaloe river falls into the Ohio on the eastern side of it, at the distance of 925 computed miles from Fort Pitt. It is a

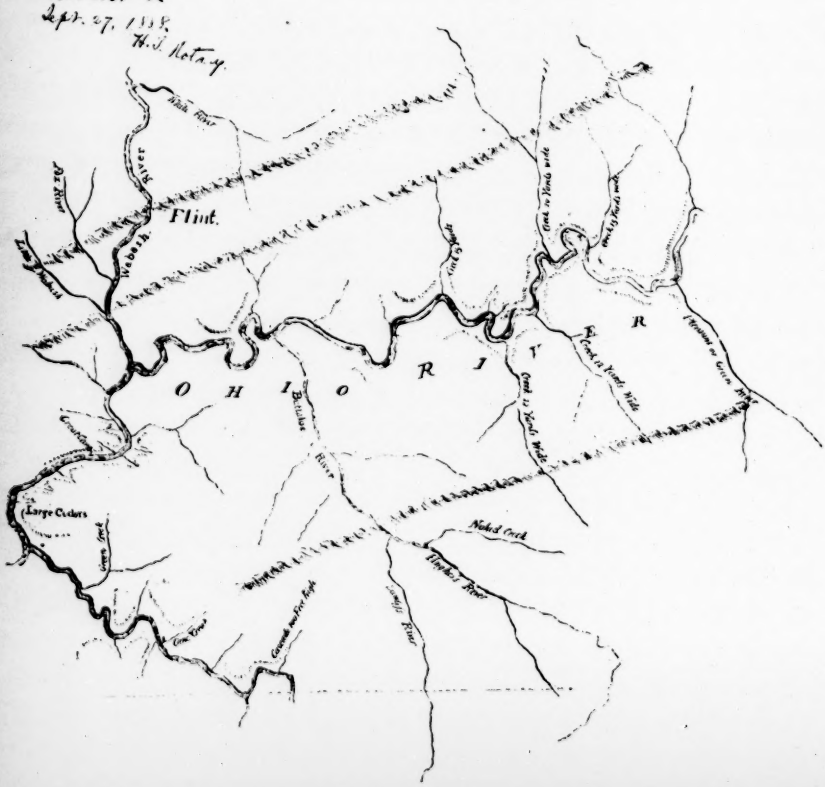
Exhibit K.

E.

A
NEW MAP
of the Western Parts of
VIRGINIA, PENNSYLVANIA,
MARYLAND and NORTH CAROLINA;
Comprehending the RIVER OHIO, and all the Rivers, which fall into it;
Part of the RIVER MISSISSIPPI, the Whole of the
ILLINOIS RIVER,
LAKE ERIE; Part of the LAKES HURON
MICHIGAN &c
and all the COUNTRY bordering on those
LAKES and RIVERS.

(By) The Hutchins
Captain in the Co Regiment of Foot

Exhibit R
Sept. 27, 1838.
H. J. Notary.



very considerable branch of the Ohio; is 200 yards wide, navigable upwards of 150 miles for battoes or barges of 30 feet long, 5 feet broad, and 3 feet deep, carrying about 7 tons, and can be navigated much farther with large canoes. The stream is moderate. The lands on both sides of this river are of a most luxuriant quality for the production of hemp, flax, wheat, tobacco, etc. They are covered with a great variety of lofty and useful timber—as oak, hickory, mulberry, elm, etc. Several persons who have ascended this river say that salt springs, coal, lime, and free-stone, etc., are to be found in a variety of places."

And I further certify that the map referred to as "the annexed map" in the title page of said book, hereinbefore recited, is the map from which the tracing marked E, and covering that portion of said map containing the territory about the junction of the Ohio and Buffalo rivers, has been made.

Witness my hand this 24th day of September, A. D. 1888.

A. R. SPOFFORD,
Librarian of Congress.

355 CITY OF WASHINGTON, }
District of Columbia, } ss:

Before me, James D. Maher, a notary public for said city and District, personally appeared Ainsworth R. Spofford, signer of the foregoing instrument of writing, and acknowledged the same to be his affidavit for the purpose herein set forth.

Witness my hand and notarial seal this 24th day of September, A. D. 1888.

JAMES D. MAHER,
Notary Public.

(Here follows diagram marked Exhibit K.)

356 32 Q. You may state whether or not you are familiar with the Green River Island bayou, as it exists at present, from recent observations.

A. Yes, sir; I am.

33 Q. To a person passing near the bayou or along the bayou during all seasons of the year at present, when there is low water, does or does not the island, so called, appear to be a part of the surrounding land?

A. Yes, sir; it appears to be part of the surrounding land; seems to be a little slough between; that is all.

34 Q. Is the bayou channel at present cultivated across its entire width, at points, or not?

A. At points it is cultivated across its entire width; yes, sir.

35 Q. How many people of voting age are there at present residing on the island?

A. I could not answer that question; I do not know. I should think there might be 20 to 40; somewhere along there.

36 Q. What is the average value of the land on the island per acre?

A. I do not know whether I would be a good judge of that or not. I would think land would be worth $75 an acre—$50 to $75.

37 Q. How many acres are there, approximately, in the island and the tow-head?

357 A. A little over 2,000 in the island, and I do not know how many in the tow-head. I never made an accurate survey of the tow-head, and I could not tell.

38 Q. You may state, if you know, by whom the lands in the bayou channel are held or claimed or cultivated at present.

A. Claimed by both sides—Indiana parties and Kentucky parties. I do not know who is cultivating them this year; sometimes one and sometimes the other.

39 Q. Referring to the map marked Exhibit "Z," you may state what is the relative position of the head of the island on that map as compared with its position at present.

A. It is three-fourths of a mile further up the river on that Exhibit "Z" than it is at present.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

40 Q. While on that exact point, how much higher up the river does the head of the island appear on Exhibit "Z" than on Exhibit "H?"

A. Thirty-four chains; that is, six chains less than half a mile, nearly 400 feet less than half a mile—396 feet less than half a mile.

41 Q. You have expressed the opinion that the map of which Exhibit "Y" is a copy was made in high water. Upon the

358 same theory what would you say was the condition of the water at the time when the map marked Exhibit "Z" was made, or the survey made from which that map was gotten up?

A. I do not think that map was ever made from a survey at all.

42 Q. Did I understand you as saying that Exhibit "Y," so far as it represents the island at all, represents it at high water; I do not mean flood height, but in high water?

A. Well, I should think that is the way—at the time the survey was made that it would not be low water there.

43 Q. Presuming for argument's sake that Exhibit "Y" was approximately correct, would you say that it represented the island and its surroundings at low water or high water?

A. Do you mean right low water?

44 Q. I do not mean dead low water, but at what stage of water would you say it represented the island?

A. Well, I could not tell by the map what stage of water the map would show.

45 Q. Can you tell by any map what the stage of the water was?

A. No; I judge that from the time the survey was made, not from the map.

46 Q. As you do not know the date of the survey from which Exhibit "Z" was made, assuming that it is correct approxi-

359 mately, what would be your judgment as to whether it shows the condition of things at low water or not?

A. Well, what I would judge from that—the men that put the island up there where it is shown on that map—the island must have been all overflowed and they had to guess at where it was.

47 Q. Please answer my question.

Mr. SNOW: He has answered the question.

A. That is the only answer I know. In low water the men could see there was no outlet there as far up as that shows the head of the island or in any ordinary water.

48 Q. Have you any personal knowledge of the form and dimensions of the island and the head of the island prior to 1857?

A. I have knowledge of them from old surveys and old maps I have seen.

49 Q. Have you any personal knowledge from your own inspection?

A. No, sir.

50 Q. If you can, suppose Exhibit "Z" to be approximately correct as representing the island at any time before you had personal knowledge of it, would you judge from Exhibit "Z" that it represented the island from low water or extreme low water?

A. I do not think it would make much difference whether the river was high or low at the head of the island there, where the island is.

360 51 Q. Now, please answer my question.

A. I do not exactly understand the question.

52 Q. The notary will please read it to you again.

(The question was repeated as requested.)

A. You want to know whether that was at low water or not?

53 Q. In your judgment, as an expert, does it most probably represent the island in low water or high water?

A. Well, it did not represent it in extreme high water, because the river is all over that country then. Of course, it must be something lower than extreme high water a good deal.

54 Q. Would the small island represented on Exhibit "Z," at the head of the bayou, appear at all, except in extreme low water?

A. Do you mean now?

55 Q. At any time in your recollection?

Mr. SNOW: That is assuming the existence of an island in there.

A. Why, yes; that island ground in there is about nearly as high as any other ground; and whenever the water cut off the balance of Indiana it would not take much more to cut off that, and if there were two deep channels around it it wouldn't be necessary to have extreme low water to have an island, to show the ground
361 there. In extreme high water there would not any island appear there because all that ground would be covered.

56 Q. Do you not think that that map was intended to represent the island and its surroundings at extreme low water?

A. No, sir; I do not think it was intended to show it at extreme low water.

57 Q. Well, at low water?

A. I do not think it was.

58 Q. Then at what stage of water?

A. The reason I make this answer is because it shows water through that channel, and at extreme low water at that time, so far as I know, there would not be any water through that channel; and, of course, if it showed water it must be at a sufficient stage for water to run through there.

59 Q. Your reason for saying it does not represent the island at low water is because it shows a wide bayou and islands in that bayou?

A. I suppose that is the channel. If there was no water running through there that is my understanding of it.

60 Q. What is the formation at the head of Green River Island; is it a bluff bank or does it slope up gradually from the river?

A. Well, it is part of it on a bluff, and then goes down onto
362 the bar and has a gradual slope out to the river; part right next to the bank there is tolerably steep. Right at the mouth of the bayou it is not as steep as it is on either side; more of a gradual slope right there.

61 Q. In extreme low water how far above the bluff bank at the head of the island does this bar extend?

A. I do not know just how far it goes at extreme low water, but with about six or seven feet on the gauge it extends up to a line between sections 14 and 15, or a couple of hundred feet beyond it, and there joins onto the bank.

62 Q. And there joins to the Indiana bank?

A. Joins to the Indiana bank; yes, sir.

63 Q. It is something more than a quarter of a mile that that bar extends, is it not?

A. Yes, sir; that bar extends away down above the tow-head.

64 Q. Runs around the head of the island?

A. Yes, sir; encloses the whole island.

65 Q. Has not that bar very largely increased within your recollection?

A. I cannot say anything definite about that. I do not think I ever paid any attention to the bar. I do not think I was up there very often until I saw it lately. I think that was probably the first time I ever noticed where the bar went.

363 66 Q. Do you not know that in fact Green River Island is very much wider now than it was thirty or forty years ago?

A. Yes, sir; I think it is.

67 Q. Or even longer ago.

A. I think it is a good deal wider than it was.

68 Q. To what extent do you suppose it has increased?

A. I could not tell that; it may have increased probably ten to fifteen chains in places; six hundred to a thousand feet wider.

69 Q. Referring now again to Exhibits "Y" and "H," at what

time was the survey of which Exhibit "H" purports to be a copy made, with reference to the river?

A. I think there was a pretty good stage of water in the river at that time.

70 Q. Is there anything to show the exact date of the survey?

A. Yes, sir.

71 Q. What is it?

A. The field-notes show the date of the survey.

72 Q. On which?

A. These notes included with "Y."

73 Q. I understand that. Is there anything to show the exact date of the survey which Exhibit "H" purports to show?

364 A. Shows the year but not the date, not the month or the day of it.

74 Q. I will ask you now to place Exhibit "H" on Exhibit "Y" and see if the section lines correspond exactly.

A. (After examining exhibits as requested.) They do not all correspond exactly.

75 Q. With the section lines fitting as nearly as they can be made to fit, does the river line on Exhibit "H" correspond to the line on Exhibit "Y?"

A. The river line does not correspond with the river line on "Y."

76 Q. Do the lines representing the south side of the river correspond at all?

A. No, sir.

77 Q. Do the lines representing Green River Island correspond at any point?

A. No, sir.

78 Q. By whom were both of those surveys made?

A. It is all one survey.

79 Q. Do not both Exhibit "H" and Exhibit "Y" purport to be copies of the same survey?

A. "H" is a copy of records that are at Indianapolis, purporting to be records of the survey of Mr. Fowler, and, I believe, the other is from Washington, purporting to be records of the same survey.

80 Q. Do you know where the original survey is on file?

A. No, sir; I do not. I have seen the surveys and field-notes at Indianapolis, but whether they are the originals or not I do not know.

365 81 Q. Was not this survey made by the Government of the United States ten years before Indiana was made a State?

A. Yes, sir.

82 Q. Placing Exhibit "H" on Exhibit "Y" again, so that the section lines correspond as closely as possible, do those maps correspond at all in the location or direction of Green River Island?

A. No, sir; they do not correspond exactly.

83 Q. Now, comparing Exhibits "H," "Y," and "Z," so far as the island and bayou are represented, is there not about as much difference between Exhibits "H" and "Y" as between them and Exhibit "Z?"

A. Well, in a general map of the island there is about the same

difference between those—"Y" and "H"—as there is between them and "Z." I think the head of the island—they come closer together, "Y" and "H," than "Z" does, as far as to showing its location up and down the river.

84 Q. What is the date of Exhibit "Z?"

A. 1857.

85 Q. What is the date of the survey of Exhibits "Y" and "H?"

A. 1806.

86 Q. You are still the surveyor of Vanderburgh county, are you not?

A. No, sir; I have not been county surveyor for about seven years.

366 87 Q. Is not the map from which Exhibit "Z" is taken on file in the county surveyor's office?

A. It may be now. When I was county surveyor all the records I got were three record books of surveys made by county surveyors. There were no county maps there at that time at all. I borrowed one, I think, from Mr. Garvin and made a tracing of the whole county off of that and had it as long as I was in there, and I think probably that is there yet. If there is any other map, any lithographic map, there of the county it was not there when I was there, and I did not turn any map over. That map may have been there that I made, but I did not intend to leave that there if I did. The only records I got were three books and some copies of field-notes. I got this Lunkenheimer map.

88 Q. The same map, then, of which this is a copy?

A. Yes, sir.

89 Q. So far as you know, is not that map reasonably accurate as to Vanderburgh county?

A. In a good many things it is accurate. In this place it is merely—it purports to be—the distances and notes on it to be—a copy of the map of 1806.

90 Q. Where does it claim that?

A. It shows that in the dimensions it gives; it shows just
367 exactly the same figures as were given on the map of 1806. Of course, if they were from other surveys afterwards there would be a good deal of difference.

91 Q. You mean it is on the same scale and with the same marks?

A. No; I mean where it shows the distances or fractional sections instead of showing the distances made from actual measurement made at the time this map was made it shows the exact distances that are shown on the survey of 1806.

92 Q. How wide is the bayou represented on Exhibit "Z?"

A. The general width where there are no islands is about five—between five and six chains.

93 Q. Put it in feet.

A. Five chains are 330 feet, and six chains 396 feet.

94 Q. Have you made any other map of Green River Island than the large one filed as Exhibit "C" with your deposition?

A. Have I made any?

95 Q. Yes, sir.

A. Do you mean copied any?

96 Q. No; have you made any other map yourself?

A. I have made copies of another map, but I have not made any other myself.

97 Q. What other maps than Lunkenheimer's have you copied of Green River Island?

A. I have made a copy of a map made by William Whit-
368 tlesey.

98 Q. Have you made any other than the one you made yesterday?

A. Yes, sir. No, sir; I have made no other map of the whole island.

99 Q. Have you made any other map of the head of the island?

A. Yes, sir; made a copy showing the head of the island in 1857, in a partition case—the Corydon-Garrett partition case—between Garrett and some other parties.

100 Q. Where is that map now?

A. I believe Mr. Snow has it.

Mr. SNOW: It will be put in evidence. It is not ready to be filed yet.

101 Q. It has not been filed, then?

A. No, sir.

102 Q. From what was that map copied?

A. It was copied from off one of the circuit court records—I believe, circuit court record "J," of Vanderburgh county circuit court.

103 Q. Is the original now in the office of the clerk of the circuit court in this county?

A. No, sir; I do not think it is.

104 Q. Where is it?

A. I tried every way to find out before I made that map, but I could not find it.

369 105 Q. From what did you make your copy if not from the original?

A. Made it from a map on record, by order of the court; on record with the decree of partition.

106 Q. By whom was the original map made, if you know?

A. Made by my father.

107 Q. At what date?

A. 1857.

108 Q. The map of which you speak, then, represents the island in sections 15 and 14?

A. All in 15.

109 Q. Section 15, township 7, is that?

A. Yes, sir.

110 Q. In Vanderburgh county, is it not?

A. Yes, sir.

111 Q. You spoke of the bayou being in cultivation and in low water appearing to be joined to the Indiana bank. Are there not still at a good many places rather abrupt banks going from the Indiana side right down to the bayou?

A. Yes, sir.

112 Q. And up on the other side?

A. Yes, sir; there are banks there tolerably steep in some places.

113 Q. Where a number of the roads cross to the island are not the banks still quite steep?

A. Yes, sir.

370 114 Q. Has not the bayou filled up very much within your recollection?

A. I never was much familiar with the head of the island, but I think it has filled up some there; but I never knew that place much until ten or twelve years ago, and never paid much attention towards it. Down towards the centre I do not see very much change. I used to go up there fishing. There were holes up there then in low water, and it looked to be about the same yet.

115 Q. Do you know how much the island has increased at the foot in the last fifty or sixty years?

A. No; I do not. It has increased a good deal since I recollect it at the foot.

116 Q. Has it not washed more or less at the head and increased on the south side and the foot very largely?

A. It don't look to me like it has washed away any up at the head. I do not think it has washed away anything much. I know it has increased at the foot of the island.

117 Q. Is not the area of the island proper now between twenty-two and twenty-three hundred acres, leaving out the tow-head?

A. Depending on the way you call the bank of the river there. I ran it where it was cultivated, and it made 2,047 acres of it.

371 Take down the bars and some places it might cover, and it would be more than that.

118 Q. Taking from the middle of the bayou on the Indiana side to low-water mark on the Kentucky side, about how many acres are there in the island?

A. I could not tell that. I do not know just how the low-water mark would run there. It would be a good deal more than two thousand acres.

And further the witness saith not.

(Signature waived.)

Whereupon, at 5 o'clock p. m., the further taking of these depositions was adjourned until 7 o'clock p. m. of said day.

SEVEN O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The taking of the depositions was resumed, as follows:

Mr. SNOW: I will ask the notary to mark the paper which I now hand him Exhibit "L" for identification.

(The notary marked the paper for identification as requested.)

372 COMMODORE KELLY, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. State your name.
A. Commodore Kelly.
2 Q. Where do you reside, Mr. Kelly?
A. Boonville, Warrick county, Indiana.
3 Q. Do you hold any official position in Warrick county; if so, what?
A. Yes, sir; I am recorder of Warrick county.
4 Q. For how long have you held that position?
A. Four years ago. The 24th of last February I entered on my second term.
5 Q. Refer to the paper marked Exhibit "L" and examine it, and you may state what the plat annexed to Exhibit "L" purports to be.
A. (Examining exhibit.) "The plat of the dividing line between the States of Kentucky and Indiana. D. N. Walden, August Pfafflin, commissioners."
6 Q. You may state whether you have now examined the writing which is part of Exhibit "L."
A. Yes, sir; I did.

373 7 Q. You may state whether or not a writing, which is the original or a copy of the writing and plat marked Exhibit "L," is on file in the recorder's office of Warrick county, Indiana.
A. No, sir; there is nothing of that kind in my office.
8 Q. Have you ever searched your office for the purpose of endeavoring to find such survey?
A. Yes, sir; I made complete search twice. I and De Bruler searched there one time three years ago, as well as I remember.
9 Q. You may state whether, since making that search, a paper—the original or copy of the paper marked Exhibit "L"—has been filed in your office.
A. No, sir.
10 Q. You may state whether or not a paper, which is the original or copy of the paper marked Exhibit "L," is recorded in the recorder's office of Warrick county.
A. No, sir; it is not.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

11 Q. How long have you been recorder of Warrick county?
A. Four years ago the 24th day of last February. I entered on my second term the 24th of last February.
12 Q. How far back did you examine the records of your office?
A. I examined back from the first record.

13 Q. What is the date of that record?

374 A. I believe it is 1813, if I am not mistaken. I think that is about the oldest record I have—1813 or 1814.

14 Q. Who was recorder of your county in the year 1875?

A. I think it was a man by the name of Scales.

15 Q. What was his first name?

A. Thomas Scales, I think, was recorder in 1875.

16 Q. Is he living or dead?

A. He is dead.

17 Q. When did he die?

A. He has been dead about six years, I think, as well as I remember.

18 Q. Can you say that the report and survey, a copy of which Exhibit "L" purports to be, never was filed in your office?

A. No, sir; not that I can find in my search.

19 Q. I say, can you say it was never filed in there?

A. Yes, sir; I suppose I can, because I have hunted and I cannot find it in the office. That is all I have to go by.

20 Q. Can you say it was never lodged there by the commissioners, Walden and Pfafflin, and afterwards withdrawn by some one?

A. Well, I cannot say; but as to being on record, it is not in my office that I can find in my search.

21 Q. You mean by not being on record that there is no record of it?

A. No record of it.

375 22 Q. I asked you if it never had been filed?

A. Well, if I filed an instrument for record, according to my——

23 Q. (Interrupting.) I did not ask you about filing things for record or what the practice is, but I asked you if you can say on your oath that the original, of which that purports to be a copy, never was filed in your office?

A. If it is filed, it is bound to be recorded, according to law, and I take a general index; for instance, if you sent an abstract I take my index for it. I do not take the filing record, for if it is filed it is certainly recorded according to law.

24 Q. You mean that the law requires whatever is filed in your office to be recorded?

A. That is what I mean exactly. If an instrument is filed in my office, according to law, it must be recorded.

25 Q. Can you say that that paper, of which that purports to be a copy, was never deposited or lodged in your office by the commissioners, Walden and Pfafflin?

A. I tell you it is like this: They might deposit—for instance, a man bringing an instrument to me and not bringing the money with him, and he might lay the instrument there, and I might lay it away in the box, and he might carry it out without putting it on file. I never found anything on file.

376 22 Q. I asked you if it never had been filed?

A. Well, if I filed an instrument for record, according to my——

23 Q. (Interrupting.) I did not ask you about filing things for record or what the practice is, but I asked you if you can say on your oath that the original of which that purports to be a copy never was filed in your office?

A. If it is filed it is bound to be recorded according to law, and I take a general index; for instance, if you sent an abstract I take my index for it; I do not take the filing record, for if it is filed it is certainly recorded according to law.

24 Q. You mean that the law requires whatever is filed in your office to be recorded?

A. That is what I mean exactly. If an instrument is filed in my office according to law it must be recorded.

25 Q. Can you say that that paper, of which that purports to be a copy, was never deposited or lodged in your office by the commissioners, Walden and Pfafflin?

A. I tell you it is like this: They might deposit—for instance, a man bringing an instrument to me and not bringing the money with him, and he might lay the instrument there and I might say, Pay me the fees and I will record it; and I might lay it away in the box and he might carry it out without putting it on file. I
377 never found anything on file or on record there, but as to being left there I do not know; an instrument might be left and not even filed or recorded.

26 Q. Can you say that the original of that paper was never left there before the beginning of your term of office for record?

A. I could not say that because it might have been left, but I say I never have found any record of it. I could not say that it never had been left there, for you might leave an instrument and come and take it away—not pay the fee, but come and call for it, as leases and deeds have been done before this.

27 Q. Is there in your office any record of the official correspondence between the former recorder of your county and other persons, including that of the recorder in 1875?

A. I do not know whether I exactly understand.

28 Q. Is there any record in your office of whatever correspondence your predecessors had about things in the office; did they keep any copies of letters or any records?

A. I have laid away a good many old letters hanging up on a wire. I never looked to see about any correspondence of that kind. I never found anything of the kind, because I did not have occasion to look over it.

378 29 Q. Can you say whether Governor Hendricks ever instructed the former recorder of your county, the recorder in 1875, not to record the report and survey of which Exhibit "L" is a copy?

A. No, sir; I do not know anything about that.

30 Q. How far above a point opposite the mouth of Green river is the line between Warrick and Vanderburgh counties?

A. As well as I know the place, I do not know that I can tell you exactly.

31 Q. How far above Evansville, on the Indiana side of the river, is the dividing line between Vanderburgh and Warrick counties?

A. I believe it is about three miles and a half below Newburgh.

32 Q. Below Newburgh?

A. I think so.

33 Q. How far is Newburgh above Evansville, by the river?

A. By the river, I do not know. It might be further than that. I was thinking about the road from Newburgh down to Evansville, the dirt road.

34 Q. You mean the road down the river?

A. Yes; the road leading from Newburgh.

35 Q. That road runs how?

A. I do not know. I never was very much acquainted with the distances there and never paid any attention. I do not know as I can answer that now.

379 36 Q. Is the dividing line between Warrick and Vanderburgh counties above the point on the Indiana bank opposite the mouth of Green river?

A. I know very well where the island is, but I never paid any attention to where the line is.

37 Q. How far do you think it is above Evansville?

A. I think, by the road, three miles and a half or four miles, maybe.

38 Q. Above Evansville?

A. No; below Newburgh.

39 Q. How far above Evansville is it?

A. It may be further than that below Newburgh. I never paid any particular attention. I went the road many a time, but I never called to mind anything of the kind. It may be further. I know where the island is.

40 Q. Do you know where the old McAlister, now the Aikens, place is, in township 14 of Vanderburgh county, section 14 of township 7? Do you know where that place is?

A. I do not know exactly. I have a good idea where it is, but I never was down through that country to amount to anything. I have passed that road down the river, and that is all.

And further the witness saith not.

(Signature waived.)

380 Mr. Snow: I will offer in evidence a certified copy of the report of the commissioners in the matter of the boundary line between the States of Indiana and Kentucky, which has been marked as Exhibit "L" by the notary.

The paper above referred to being in the words and figures following, to wit:

381 *Report of Commissioners.*

Whereas the General Assembly of the Commonwealth of Kentucky passed an act entitled An act to fix and determine the boundary line between the States of Indiana and Kentucky above and

near Evansville, approved 21st April, 1873; and afterwards, in conformity with the provisions of this act, D. N. Walden, of the county of Henderson, Kentucky, was by the Governor of Kentucky duly appointed commissioner to do the act therein specified; and whereas the General Assembly of the State of Indiana passed an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville and making the same evidence in any dispute and declaring an emergency," approved 27th February, 1875; and afterwards, in conformity with the provision of said last-mentioned act, August Pfafflin, of Evansville, Indiana, was by the Governor of Indiana duly appointed commissioner to do the act therein required to be done. Said commissioners report that, in pursuance of said act and in pursuance of our commissions, duly to us issued, copies of which are herewith filed and hereto attached as a part of this report, we did run a line and made the survey in the manner and form required by said act. We have consulted and have been gov-
382 erned by the surveys originally made by the Government of the United States in the year 1806, the original and only survey made by the United States of said line, and we have further established proper monuments along the line of said survey whereby the same may be plainly indicated; and having, on the 17th day of July, 1875, completed said survey within ten days thereafter, to wit, on the 27th day of July, 1875, we have reduced, and now here reduce, to writing said survey, pointing out the distances, directions, monuments, and marks, as well as the boundary line now hereby as established between the States of Indiana and Kentucky, and other matters appearing on the map or plat hereafter mentioned. Said line divides the counties of Henderson, Kentucky, and Vanderburgh, Indiana and Kentucky, and is as follows: Commencing at a stake on the bank of the Ohio river on the south line of fractional section fourteen, township seven south, of range ten west, of the second meridian, opposite the mouth of Green river, thence north 82° west 14.00 chains to a stake; thence north 73° west 5.50 chains to a stone marked (M), on the section line dividing fractional sections 14 & 15, 67.57 chains south of the section corners 10, 11, 14, 15, and 0.82 chains north of a sycamore 24″, on the bank of the Ohio river; thence north 61¼° west 3.56 chains to a stone; thence north 43¼° west 10.25 chains to a
383 stone; thence north 47¼° west 18.50 chains to a stone; thence north 54¼° west 22.75 chains to a stone; thence 68¼° west 19.00 chains to a stone; thence north 67¼° west 20.50 chains to a stone marked (N), on the section line dividing fractional sections 15 & 16, 15.81 chains south of the section corners 9, 10, 15, 16, mulberry (10″, old tree) S. 66° W. 4 links; thence north 71½ west 7.90 chains to a stone; thence north 62½° west 6.31 chains to a stone; thence north 58½° west 20.00 chains to a stone marked (O), on the section line dividing fractional sections 9 & 16, 29.67 chains west of the section corners 9, 10, 15, 16, sycamore 88″, S. 37½° E. 140 links, sycamore 72″, N. 84¾° W. 115 links; thence north 61¾° west 4.53 chains to a stone; thence north 62½ west 10.90 chains to a stone; thence

north 62° west 34.00 chains to a stone; thence north 57° west 10.00 chains to a stone marked (P), on the section line dividing fractional sections 8 & 9, 50.00 chains south of section corners 4, 5, 8, 9; thence north 57° west 13.84 chains to a stone; thence north 54° west 10.00 chains to a stone; thence north 52¼° west 10.66 chains to a stone; thence north 47° west 35 chains to a stone; thence north 41° west 7.12 chains to a stone marked (Q), on the section line dividing fractional sections 5 & 8, 59.39 chains west of the section corners 4, 5, 8, 9, stump of old tree (maple), sycamore 56″, N. 77½° E. 29 links, elm 49″, N. 4° E. 76 links; thence north 39° west 10.00 chains to a stone; thence north 37° west 9.00 chains to a stone; thence north 34° west 10.00 chains to a stone; thence north 32° west 8.48 chains to a stone marked (R), on the section line dividing fractional sections 5 & 6, 52.92 chains south of the section corners 5, 6, 31, 32 (B), maple 45″, N. 52° 38½ links; thence north 31° west 13.68 chains to a stone; thence north 29° west 10.91 chains to a stone; thence north 26¾° west 10.75 chains to a stone; thence north 24½° west 13.78 chains to a stone; thence north 15¼° west 9.85 chains to a stone marked (A), on the township line dividing townships 6 & 7 south of range 10 west of the second meridian, old tree standing (elm); thence north 12° west 4.00 chains opposite the foot of Green River Island.

384

A map or plat of the lines and survey aforesaid, signed by us as commissioners, is attached to this report and made a part thereof.

Executed and acknowledged by us this — day of ——, 1875.

D. N. WALDON.
AUG. PFAFFLIN.

(Here follows diagram marked Exhibit L.)

385 *Copy of the Commission of D. M. Walden.*

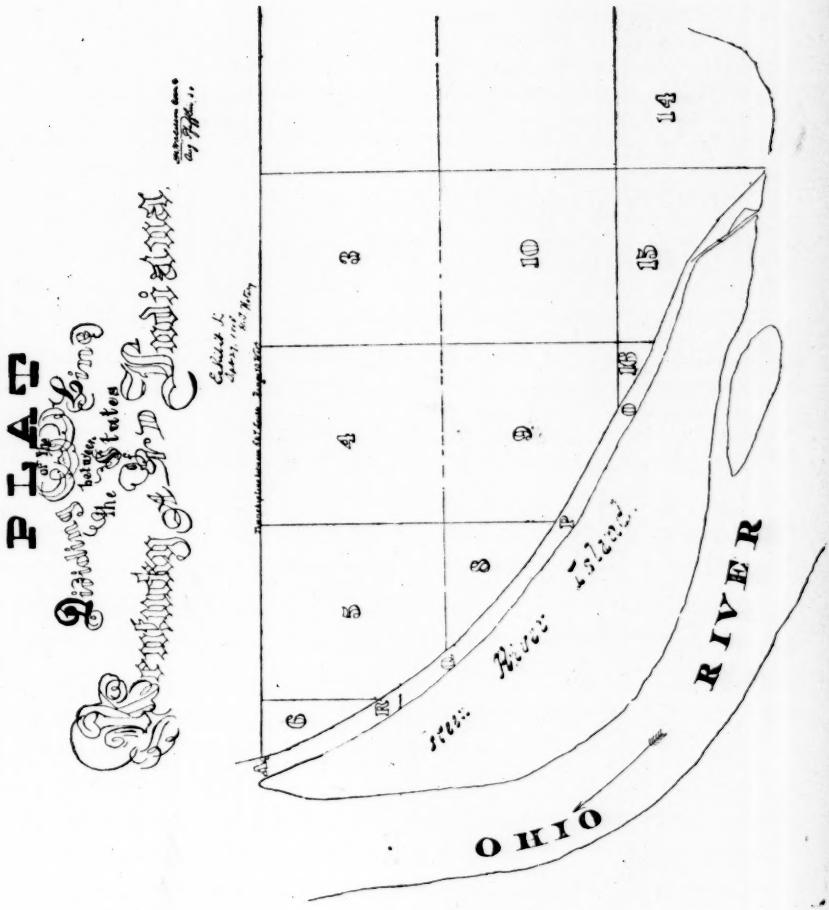
In the name and by the authority of the Commonwealth of Kentucky, Preston H. Leslie, Governor of said Commonwealth, to all whom these presents shall come, Greeting:

Know ye that D. N. Walden having been duly appointed commissioner for the State of Kentucky to execute, in connection with a similar commissioner for the State of Indiana, the duty of setting the line dividing the two States, pursuant to the provisions of an act entitled "An act to fix and determine the boundary line between the States of Indiana and Kentucky above and near Evansville," approved April 21st, 1873, I hereby invest him with full power and authority to execute and discharge the duties of the said office according to law, and to have and to hold the same, with all the rights and emoluments thereto legally appertaining, for and during the term prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the Commonwealth to be hereunto affixed.

Done at Frankfort the 5th day of June, in the year of our Lord

Exhibit L.


PLAT
Dividing of the Line between the States of Kentucky & Ind Indiana
Green River Island
OHIO RIVER
A
R
C
P
D
6
5
4
3
8
9
10
13
15
14

one thousand eight hundred and seventy-three, and in the 82nd year of the Commonwealth.

P. H. LESLIE, *Governor.*
[SEAL.] G. W. CRADDOCK, *Sec'y of State,*
By W. H. BOTTS, *Assistant.*

Copy of the Commission of August Pfafflin.

386 The State of Indiana, by Thomas A. Hendricks, Governor, to all who shall see these presents, Greeting:

Whereas it is provided by an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville and making the same evidence in any dispute and declaring an emergency," approved February 27th, 1875, that the Governor be empowered and directed to select a commissioner, who shall be a resident of the State of Indiana and a practical surveyor, who shall act with a similar commissioner to be appointed by the Governor of the State of Kentucky, and make a survey of the line dividing said States, beginning at the head of Green River Island, near and opposite to the mouth — Green river, and running thence down the Ohio river to the lower end of said island: Therefore know ye that, reposing confidence in the diligence and ability of Aug. Pfafflin, of Vanderburgh county, I do, in the name and by the authority of the State of Indiana, hereby appoint and commission the said Aug. Pfafflin commissioner on the part of the State of Indiana to execute the purposes of the act aforesaid, to serve as such from this thirteenth day of May, 1875, during the pleasure of the appointing power.

In testimony whereof I have hereunto set my hand and
387 caused the seal of the State to be affixed, at the city of Indianapolis, this 13th day of May, in the year of our Lord 1875, the 59th year of the State, and of the Independence of the United States the ninety-ninth.

[SEAL.] THOMAS A. HENDRICKS,
Governor of Indiana.

By the Governor:

JNO. E. NEFF, *Sec'y of State.*

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

Be it remembered that August Pfafflin, a practical surveyor, surveyor of Vanderburgh county, Indiana, and commissioner appointed by the Governor of the State of Indiana to ascertain the location of the boundary line between the States of Indiana and Kentucky, in conjunction with a similar commissioner appointed by the State of Kentucky, and also David N. Walden, a practical surveyor, a resident of Henderson county, Kentucky, and a commissioner appointed by the Governor of the State of Kentucky to ascertain the location of the boundary line between the States of Kentucky and Indiana, in conjunction with a similar commissioner

appointed by the State of Indiana, personally appeared be-
388 fore me, Soren Sorenson, clerk of the Vanderburgh circuit court, and produced the foregoing and annexed report and map, and severally and jointly acknowledged the said report and map, and declared the line described in said report and laid down on said map to be the true dividing line between the States of Indiana and Kentucky above and near Evansville, Indiana, for such distance as required in the respective commissions issued to them by the Governors of their respective States.

In witness whereof I have hereto set my hand and affixed the seal of said circuit court, at the city of Evansville, Indiana, this 30th day of July, 1875.

[SEAL.] S. SORENSON, *Clerk.*

STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, James D. Parvin, auditor of Vanderburgh county, Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the report of the commissioners in the matter of the boundary line between the States of Indiana and Kentucky, now on file in my office.

Witness my hand and official seal this 16th day of July, 1887.

[SEAL.] JAMES D. PARVIN,
Auditor Vanderburgh County.

389 *Certificate.*

STATE OF INDIANA, }
Office of the Secretary of State, } *ss:*

I, Charles F. Griffin, secretary of state of the State of Indiana, do hereby certify that I have made a thorough and diligent search of the records and files in the office of the secretary of state of the State of Indiana, of which records and files I am the legal custodian, and from such search I am unable to find any evidence of the filing or record of the original or a copy of the foregoing & annexed writing and map.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the State of Indiana, at the city of Indianapolis, this 22nd day of September, A. D. 1888.

CHARLES F. GRIFFIN,
Secretary of State.

390 STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, James D. Parvin, auditor of Vanderburgh county, State of Indiana, hereby certify (in addition to my foregoing and above certificate, dated July 16th, 1887) that I have made thorough and diligent search of the records in the auditor's office of said Vanderburgh county, of which said records I am the legal custodian, and from

such search I am unable to find any evidence of the recording of the original or a copy of the foregoing and annexed writing and map.

I further certify that the writing and map of which the foregoing and annexed writing and map is a copy is an original of the report of said commissioners appointed in the matter of the boundary line between the States of Indiana and Kentucky at or near Green River island, so called, on file in said auditor's office.

In witness whereof I have hereunto set my hand and official seal this 27th day of September, A. D. 1888.

[SEAL.] JAS. D. PARVIN,
Auditor of Vanderburgh County.

391 UNITED STATES OF AMERICA.

STATE OF INDIANA, } ss:
Vanderburgh County, }

I, Charles H. Butterfield, special judge and presiding justice of Vanderburgh circuit court, a court of record in and for said county and State, do hereby certify that James D. Parvin, whose name is subscribed to the foregoing certificates of attestation, now is, and was at the time of signing and sealing the same, the auditor of Vanderburgh county aforesaid and the keeper of the records and files in said auditor's office and of the seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all of his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law by the proper officer.

Given under my hand and seal this 27th day of September, A. D. 1888.

[SEAL.] CHAS. H. BUTTERFIELD,
Special Judge of Vanderburgh Circuit Court and Presiding Justice thereof.

392 UNITED STATES OF AMERICA.

STATE OF INDIANA, } ss:
Vanderburgh County, }

I, Charles T. Jenkins, clerk of the Vanderburgh circuit court, in said State, do hereby certify that Charles H. Butterfield, whose genuine signature as sole presiding judge of the Vanderburgh circuit court appears to the foregoing certificate, was at the time of making the same and still is sole presiding judge of the Vanderburgh circuit court; and I further certify that said court is a court of record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law and by the proper officer.

[SEAL.] Witness my hand and the seal of said court, at Evansville, Ind., this 27th day of September, 1888.

CHAS. T. JENKINS,
Clerk of Vanderburgh C. C.

393 STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Louis Sihler, recorder of Vanderburgh county, State of Indiana, do hereby certify that I have made thorough and diligent search of the records and files in the recorder's office of said Vanderburgh county, of which records and files I am the legal custodian, and from such search I am unable to find any evidence of the filing or record of the original or a copy of the foregoing and annexed writing and map.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 27th day of September, A. D. 1888.

LOUIS SIHLER,
Recorder of Vanderburgh County.

UNITED STATES OF AMERICA.

STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Charles H. Butterfield, special judge of the Vanderburgh circuit court, do hereby certify that Louis Sihler, whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the recorder of Vanderburgh
394 county aforesaid and the keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all of his official acts as such in all courts of record, and elsewhere, and that his said attestation is in due form of law and by the proper officer.

[SEAL.] Given under my hand and seal this 27th day of September, A. D. 1888.

CHAS. H. BUTTERFIELD,
Special Judge of Vanderburgh Circuit Court and Presiding Justice thereof.

UNITED STATES OF AMERICA.

STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Charles T. Jenkins, clerk of the Vanderburgh circuit court, in said State, do hereby certify that Charles H. Butterfield, whose genuine signature as sole presiding judge of the Vanderburgh circuit court appears to the foregoing certificate, was at the time of making the same and still is sole presiding judge of the Vanderburgh circuit court; and I further certify that said court is a court of
395 record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law and by the proper officer.

[SEAL.] Witness my hand and the seal of said court, at Evansville, Ind., this 27th day of September, A. D. 1888.

CHAS. T. JENKINS,
Clerk of Vanderburgh C. C.

Certificate.

STATE OF INDIANA, } ss:
Office of the Recorder of Warrick County, }

I, Com. Kelley, recorder of Warrick county, Indiana, do hereby certify that I have made a thorough and diligent search of the records and files in the recorder's office of Warrick county, Indiana, of which records and files I am the legal custodian, and from such search I am unable to find any evidence of the filing or record of the original or a copy of the foregoing & annexed writing & map.

[SEAL.] In witness whereof I have hereunto set my hand and official seal this 26th September, 1888.

COM. KELLEY, *R. W. C.*

396 STATE OF INDIANA, } ss:
County of Warrick, }

I, Robert D. Richardson, presiding justice of the Warrick circuit court, a court of record in and for said county and State, hereby certify that Com. Kelley, whose genuine signature appears to the above and foregoing certificate, is the recorder of said Warrick county, duly commissioned and qualified; that his official acts are entitled to full faith and credit as such, and that the above attestation is in due form of law and by the proper officer.

[SEAL.] Witness my hand and seal this 26th day of September, A. D. 1888.

ROBERT D. RICHARDSON,
Presiding Justice Warrick Circuit Court.

STATE OF INDIANA, } ss:
County of Warrick, }

I, J. W. Hargrave, clerk of Warrick circuit court, a court of record in and for said county and State, hereby certify that Robert D. Richardson, whose genuine signature appears to the above and foregoing certificate, is the judge *pro tempore* and presiding justice
397 of said Warrick circuit court, duly appointed by Hon. George L. Reinhart, judge of said Warrick circuit court, in conformity with the laws of the State of Indiana; which said appointment is in the words following, to wit:

STATE OF INDIANA, *Warrick County:*

Warrick Circuit Court. September Term, 1888.

On account of serious illness in my family, which prevents me from returning to hold said court for the present, and being unable to secure the services of any judge of a circuit, superior, or other courts of general jurisdiction, or of the superior court, now, in order to prevent delay in said court, I hereby appoint Robert D. Richard-

son, an attorney of this State, who is competent and in good standing in his profession, as special judge of said Warrick circuit court, to hold said court during the present term thereof or until my return.

G. L. REINHARD,
Judge Warrick Circuit Court.

That said Robert D. Richardson has duly qualified as special judge *pro tempore* under said appointment, and that his official acts are entitled to full faith and credit as such, and that the above attestation is in due form of law and by the proper officer. Witness my hand and the seal of said Warrick circuit court this 26th day of September, A. D. 1888.

[SEAL.]

W. J. HARGRAVE,
Clerk of Warrick Circuit Court.

398 Mr. SNOW: I will also offer in evidence a certified copy of the record in the case of the State of Indiana against George W. Boswell, which the notary will please mark as Exhibit "M" and attach to the testimony.

The paper above referred to being in the words and figures following, to wit:

399 Ex. M.

In the Vanderburgh Circuit Court. March Term, 1847.

STATE OF INDIANA, *Vanderburgh County,* } *ss:*

Pleas begun and held at the circuit court-house, in the city of Evansville, county of Vanderburgh and State of Indiana, on Monday, the 22nd day of March, 1847, when present the Honorable James Lockhart, judge of the first judicial circuit of the State of Indiana; Samuel T. Jenkins, clerk of the Vanderburgh circuit court, and William M. Walker, sheriff of Vanderburgh county; at which term of said circuit court so begun and held the following proceedings, among others, were had:

Be it remembered that on the fourth judicial day of the March term, 1847, of the Vanderburgh circuit court, viz., on Thursday, the 25th day of March, 1847, an order of said court was made and entered of record, and is in words and figures following, to wit:

STATE OF INDIANA
vs.
GEORGE W. BOSWELL. } Neglect as Assessor.

400 And now here, on motion of the attorney prosecuting, it is ordered that a *capias* issue herein, returnable to the next —, and that the defendant be held to bail in the sum of one hundred dollars, and this cause is continued.

And afterwards, to wit, on the 6th judicial day of the March term, 1847, of said court, to wit, Saturday, March 27th, 1847, the following order was made, viz:

STATE OF INDIANA
vs.
GEORGE W. BOSWELL. } Neglect as Assessor.

And now at this trial comes the attorney prosecuting, and the defendant also comes, in his own proper person and by counsel; and, by agreement, the continuance heretofore entered herein is set aside and the defendant enters his plea of not guilty; and by agreement of the parties this cause is submitted to the court, and the court, being sufficiently advised of and concerning the premises, adjudged the defendant guilty and assessed his fine at one dollar; whereupon the defendant moves the court for a new trial, which motion being argued and the court being sufficiently advised of and concerning the premises, overrules said motion and refused to grant a
401 new trial. Whereupon, on motion of the attorney prosecuting, it is considered that the said defendant make his fine to the State of Indiana in the sum of one dollar, and that he pay the costs of this prosecution, and, further, that he stand committed until said fine and costs are paid or replevied; and the defendant in —.

I acknowledge myself replevin bail for the stay of execution upon the annexed judgement, together with interest and costs accrued, accruing, and to accrue thereon at or before the expiration of the time allowed by law for the payment thereof.

—— ——.

STATE OF INDIANA,
Vanderburgh County, } *ss:*

I, Chas. T. Jenkins, clerk of the Vanderburgh circuit court, do hereby certify that the above and foregoing is a full, true, and complete copy of the record in the foregoing-entitled cause as the same appears of record in my office.

[SEAL.] Witness the clerk and seal of said court, at Evansville, Ind., this 27th day of September, 1888.

CHAS. T. JENKINS,
Clk V. C. C.

402 UNITED STATES OF AMERICA.

STATE OF INDIANA,
Vanderburgh County, } *ss:*

I, Charles H. Butterfield, special judge of the first judicial circuit of the State of Indiana, of which Vanderburgh county forms a part, do hereby certify that Charles T. Jenkins, whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the circuit court of Vanderburgh county aforesaid and the keeper of the records and

seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all of his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal this 27th day of September, 1888.

[SEAL.] CHARLES H. BUTTERFIELD,
Special Judge of Vanderburgh Circuit Court.

403 UNITED STATES OF AMERICA.

STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Charles T. Jenkins, clerk of the Vanderburgh circuit court, in said State, do hereby certify that Charles H. Butterfield, whose genuine signature as special sole presiding judge of the Vanderburgh circuit court appears to the foregoing certificate, was at the time of making the same and still is sole presiding judge of the Vanderburgh circuit court; and I further certify that said court is a court of record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law and by the proper officer.

Witness my hand and the seal of said court, at Evansville, Ind., this 27th day of September, 1888.

CHAS. T. JENKINS,
Clerk of Vanderburgh C. C.

404 ANTHONY C. HAWKINS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. What is your name?
A. Anthony C. Hawkins.
2 Q. Where do you reside?
A. Evansville.
3 Q. Do you hold any official position in Vanderburgh county; and, if so, what?
A. Deputy circuit court clerk.
4 Q. How long have you held that office?
A. Since the 20th of November, 1884.
5 Q. You may examine the paper marked Exhibit "M" and state what it purports to be.
A. It is a certified copy of a record in the office of the clerk of the circuit court of Vanderburgh county.
6 Q. In what case?
A. State of Indiana against George W. Boswell.
7 Q. Give the year and the term, please.
A. March term, 1847.

8 Q. You may state whether or not you have examined the files in the office of the Vanderburgh circuit court, in the case
405 which you have just mentioned, and whether or not you have been able to find them.

A. I have made search for the papers mentioned in this case and have been unable to find them.

9 Q. You may state the character of the search which you have made.

A. Well, I made very diligent search. I examined the boxes containing papers filed at that term of that court and searched generally through the office. There was no other particular place, however, to look for the papers.

10 Q. Did you or did you not search in all places in the office where, in your opinion, it was at all likely the papers would be found?

A. I did.

11 Q. You may state whether or not you found any papers in the case..

A. None whatever.

12 Q. How long have you been deputy clerk?

A. Since November 20th, 1884.

And further the witness saith not.

(Signature waived.)

406 IRA FAIRCHILD, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. Your name is Ira Fairchild, and you are the same Mr. Fairchild who testified some weeks ago in this case?

A. Yes, sir.

2 Q. You may state whether or not you have any recollection of a prosecution in the name of the State of Indiana against George W. Boswell for neglect as assessor in the year 1847 or thereabouts; and if you have any recollection of such a suit you may state the circumstances in regard to it as you remember them.

A. Yes, sir.

3 Q. State the circumstances of the suit.

A. When the court was called and the judge gave the charge to the grand jury he charged the grand jury particularly that if the assessor had not assessed—well, what you called Green River Island then—why to indict him, and I was there when the indictment was returned. I was bailiff of the court at that time, and there was an indictment returned, but further than that I do not know
407 what became of it.

4 Q. Do I understand you to say that the indictment was for neglect as assessor in not assessing land on Green River Island?

A. Yes, sir; that is the way I understood the charge at the time.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

5 Q. Who was the judge?
A. Judge Lockhart—James Lockhart.
6 Q. Do you know whether he is the same Lockhart who was attorney for John Garrett in a suit between Garrett and Jackson McClain down in Henderson county?
A. I presume he must be; I would not say that I know certainly that to be so, but I presume he was.
7 Q. He was the only lawyer of that name in this part of the country?
A. At that time—yes, sir.
8 Q. Had he had any partner before he was judge?
A. Yes, sir.
9 Q. Was a man named Hart his partner?
A. I think he was. Or was it Clark?
9 Q. Hart is the man I asked you about?
A. He had a partner, but I do not remember now his name;
408 but there was a James Lockhart who was the attorney here.
10 Q. Was there ever any other indictment against the assessor for neglecting his duties anywhere or with reference to anybody?
A. Not that I recollect of—that is, of neglecting the duty of assessing real estate.
11 Q. I did not ask you about that at all; I asked you if you could say that there never was any other indictment against any other assessor for neglecting his duties?
A. There has not been any that I recollect of; there may have been, but I do not recollect of any.
12 Q. Can you say of your own knowledge that George W. Boswell was not indicted for any other neglect of his duties?
A. He was not indicted for any other neglect of his duties that I ever heard of.
13 Q. I did not ask you that; I asked you if he never had been indicted for any other neglect?
A. Oh, well he was not indicted for any other act that I know of.
14 Q. Did you ever read the indictment against Boswell?
A. Did I ever read it?
15 Q. Yes, sir.
A. I did not.

409 Re-examination.

Questions by ALPHEUS H. SNOW, Esq.:

16 Q. Did you hear the indictment read in court?
A. I think I did.

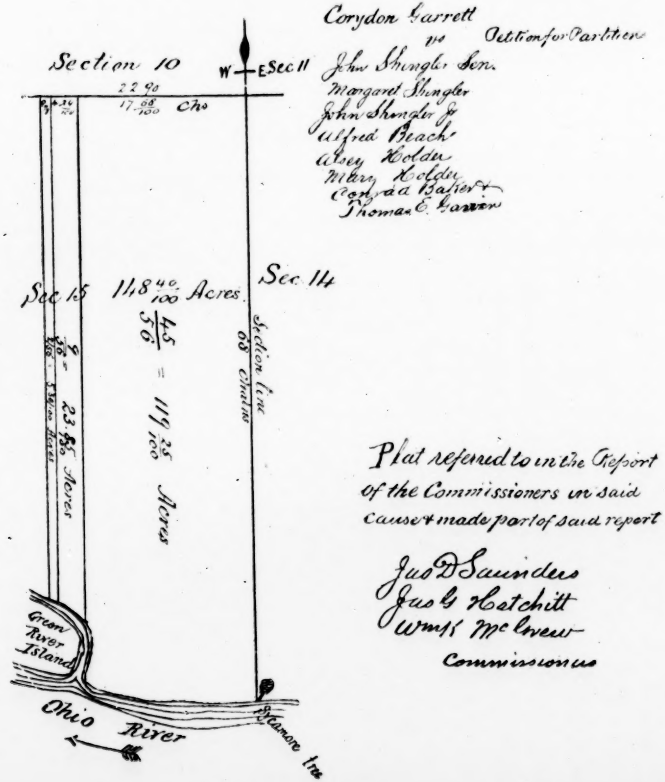
Questions by Mr. CUNNINGHAM:

17 Q. Are you certain you heard the indictment read?
A. I am pretty certain that I did.

Exhibit N.

Exhibit N.
Sept 27. 1888
H. J. Hobey.

Order Book J.
Vanderburgh Circuit
Court page 537
Oct. term 1857



18 Q. Who was the foreman of the grand jury?

A. I won't be certain, but it appears to me to be Edward Medall. I think it was him. I would not be certain. I do not remember.

19 Q. Whose property, if you know, was Boswell indicted for failing to assess?

A. I don't know that I can answer that question. Probably it has been in controversy ever since I can remember. Some claim it belonged to Indiana and some claim it belonged to Kentucky. I don't know whose property it was or whose property it is.

And further the witness saith not.

(Signature waived.)

Mr. SNOW: I offer in evidence now the certified copy of a record of the Vanderburgh circuit court, which the notary will please mark as Exhibit "N."

The paper above referred to being in the words and figures following, to wit:

(Here follows diagram marked Exhibit N.)

410 STATE OF INDIANA, *Vanderburgh County,* } ss:

I, Charles F. Boepple, deputy clerk of the Vanderburgh circuit court, do hereby certify that the foregoing is a full, true, and complete copy of the plat referred to in the report of the commissioners in the case of Corydon Garrett *vs.* John Shingler, Sr., Margaret Shingler, John Shingler, Jr., Alfred Beach, Alvey Holder, Mary Holder, Conrad Baker, and Thomas E. Garvin, as the same appears of record in Order Book "J," page 536, of the Vanderburgh circuit court, October term, 1857, of which said records I am the legal custodian.

Witness my hand and the seal of the Vanderburgh circuit court, at Evansville, Ind., this 27th day of September, A. D. 1888.

[SEAL.] CHAS. F. BOEPPLE,
Deputy Clerk, Vanderburgh Circuit Court.

UNITED STATES OF AMERICA.

STATE OF INDIANA, *Vanderburgh County:*

I, Charles H. Butterfield, special judge and presiding justice of Vanderburgh circuit court, a court of record in and for said county and State, do hereby certify that Charles F. Boepple, whose name is subscribed to the foregoing certificate of attestation, now is
411 and was at the time of signing and sealing the same the deputy clerk of the said Vanderburgh circuit court and the keeper of the records and seal thereof, duly elected, appointed, and qualified to office, and that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record

and elsewhere, and that his said attestation is in due form of law by the proper officers.

[SEAL.] Given under my hand and seal this 27th day of September, A. D. 1888.

CHAS. H. BUTTERFIELD,
Special Judge of Vanderburgh Circuit Court and Presiding Justice thereof.

UNITED STATES OF AMERICA.

STATE OF INDIANA, *Vanderburgh County,* } ss:

I, Chas. F. Boepple, deputy clerk of the Vanderburgh circuit court, in said State, do hereby certify that Charles H. Butterfield, whose genuine signature as sole presiding judge of the Vanderburgh circuit court appears to the foregoing certificate, was
412 at the time of making the same and still is sole presiding judge of the Vanderburgh circuit court; and I further certify that said court is a court of record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law and by the proper officer.

[SEAL.] Witness my hand and the seal of said court, at Evansville, Ind., this 27th day of September, 1888.

CHAS. F. BOEPPLE,
Deputy Clerk of Vanderburgh C. C.

413 JAMES D. SAUNDERS, recalled by the complainant, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

119 Q. You may examine the paper marked Exhibit "N" and state by whom the map which appears as part of it was made.

A. The original map was made——

120 Q. (Interrupting.) No; I mean the copy there.

A. I made this.

121 Q. You may state whether a map of which that is a true copy appears of record in the office of the clerk of the Vanderburgh circuit court or not.

A. Yes, sir; on Order Book "J" of the Vanderburgh circuit court, at page 537, and this is a correct copy of it.

122 Q. In what year does that map purport to be made?

A. 1857.

123 Q. You may state in what position the head of Green River Island is shown to be on that map, with reference to its position at present.

A. Nearly the same place; about the same place. It is very nearly a quarter of a mile below the line between sections 14 and 15.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

414 124 Q. Is not this a plat of land on the Indiana side of the river and Green River Island bayou?

A. Well, as nearly as it can be judged from a small scale like this; it is about as nearly correct as a person could tell from as small a map as this.

125 Q. What is it that is wrong in the position of Green river on that map?

A. Green river on this map shows it would come in a little below the head of the island when it comes in above the head of the island.

126 Q. How far above the head of the island?

A. It comes in probably three-fourths of a mile above.

127 Q. You spoke of the fact that that represented two islands, while Exhibits "H" and "Y" represented only one. What do you suppose is the significance of that?

A. (After examining Exhibit "Z.") Well, that these surveyors were making a survey of the land northwest of the river and were not paying very much attention to the island, did not make a survey of the island at all, and they thought at that time those were all one island, and did not make any survey of them; did not attach any particular importance to it.

128 Q. That is your theory, is it?

A. Yes, sir.

415 129 Q. According to the theory which you advanced this evening, might it not show the difference between the river at high water and low water?

A. No, sir.

130 Q. Did the tow-head not appear in high water?

A. Well, it don't make very much difference between the level of the tow-head and Green River Island. It is high water to get over the tow-head. They could not do any surveying on the Indiana side up the bank of the slough over there, so that they could not cross them before it would get over the tow-head.

131 Q. Was that the condition of it in 1778?

A. I was not here.

132 Q. Was that the condition of the tow-head in 1806?

A. I could not answer that question; I did not see it in 1806.

133 Q. Well, do you know anything about it; is it not all theory with you?

A. You asked me if that was the theory—that the difference of high and low-water mark would make that difference in the tow-head; but I am only talking about the tow-head as it is now; I do not know how it was in 1806.

134 Q. You speak of it as it is now.

A. Yes, sir.

135 Q. Take Exhibit "I" and say that Green River Island as put down there represents from three and a half to four miles in

length, by the same scale what is the width of the bayou be-
416 tween Green River Island and the Indiana shore?
A. It would be a quarter of a mile wide there.

Re-examination.

Questions by ALPHEUS H. SNOW, Esq.:

136 Q. You may state whether the map marked Exhibit "I" has any scale marked upon it.

A. No, sir.

137 Q. You may state whether in stating that the bayou channel is represented upon that map as a quarter of a mile in width you base that reckoning upon the hypothesis that the island is three or four miles long.

A. Yes, sir; the hypothesis that the island as shown is four miles long.

138 Q. You may state whether you compared the map shown in Exhibit "M" with the original map of record.

A. Yes, sir; I compared it with the one on record on the book.

139 Q. Did you or did you not find by such examination or comparison that that is a true and correct copy?

A. Yes, sir; it is a correct copy of that map.

140 Q. You may state whether or not in your examination this afternoon you stated that the Green River Island, so called, had by a process of filling during your memory became wider than it formerly was, and when you have stated that you may explain what the extent of the widening is, both in length and breadth.

417 A. Well, I never measured what it is, but I should think it ran from probably six to ten chains, from where the old bank of the island used to be to where the river is now. It was formerly a sand bar that extended nearly from the tow-head, nearly from the lower end of the tow-head, down to the foot of the island, and passed the foot of the island and grew up in willows and cotton-woods and gradually filled up. It is not as high as the adjoining ground now, but still a good deal of it is cultivated.

141 Q. How wide has this fill been at its widest part?

A. I never measured it, but I would judge probably it would be about six hundred feet, somewhere along there, from this old bank.

142 Q. Does it continue of that width or not?

A. No; it does not.

143 Q. What is its shape?

A. It comes up near the tow-head, and it gets closer to the river; it is not that wide up there.

144 Q. About how many acres, in your recollection, has the Green River Island, so called, gained?

A. I don't recollect the upper part of it; only just merely about the lower part. The old bank is along there. You can see it all the way along running closer to the river as it gets up towards the tow-head. It is wider down towards the lower end.

418 145 Q. But the widening has not been at any point, if I understand it, more than 600 feet?

A. No; I think not. I think it is not any wider than that, if it is that wide.

146 Q. How long is that fill approximately?

A. I should think it is about two miles.

147 Q. What is the average width of the accretions on the river side for that two miles?

A. It might be 300 feet and it might not be that wide; it was not at the time when I first recollect it. It was not river there; it was a bar growing up with willows and cotton-woods, and gradually rose until it has got high enough to cultivate it. It is not as high as the old ground now—not nearly as high.

Recross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

148 Q. What do you mean by the original bank of the island?

A. I mean the bank that is back of this accretion—a pretty well-defined bank running along the river parallel with the river—a little distance from it now.

149 Q. Is there or not, on the north side of the island, a corresponding bank equally well defined?

A. Yes; there is a bank running nearly all the way up; some places are broad, but not so well defined.

150 Q. Are there not such banks on both sides of the bayou?

419 A. Well, the bank where the road runs along just this side of the bayou.

151 Q. On the map made by Whittlesey, a copy of which you made, what was the area of the island said to be at that time?

A. Fifteen hundred and, I think, thirty-seven or fifty-seven, I do not know which, acres.

152 Q. What was the date of that map?

A. 1843.

153 Q. Does that map show to low water?

A. No; this survey was made; the map shows the bar that was there, but his survey did not go that far. His survey was run on top of the bank, and he shows the stations where he took his angles at, and I think probably the acres would be what is included inside of his line that he run.

154 Q. Are you at all certain of that, or is it merely your impression now without looking at the map?

A. I am pretty certain that that is what it would be; that it would be included in the line he ran. It shows the stations right along the river and, I presume, on top of the bank, because he shows the bars outside of his line.

155 Q. Then, if that map was correct, there has been an accretion of upwards of 500 acres, or about 500 acres, since that time. Is that correct?

420 A. I do not know whether he included to the centre of the bayou or not in his map or whether he deducted the full width of the bayou.

156 Q. To what line on the north side did you include in your estimate of something over two thousand acres on the island?

A. To the centre of the bayou.

157 Q. How much land is there between the centre of the bayou and what was known as the State line, on top of the Indiana bank, from one end to the other of that bayou?

A. Between ninety-five and one hundred acres.

158 Q. Has there been any greater accretion at the lower end of the island than at any other point?

A. I think there is right—well, I cannot say more—right at the lower end, but towards the lower end. All of it, I think, has been this side of the tow-head, or most all of it, as far as I recollect. I do not recollect the island above the tow-head at all. I never have been on the river much there until lately.

159 Q. If it be true that a tract of 49 acres in 1826 had grown in 1877 to be one hundred and thirty acres, what increase would it represent for the whole island?

A. That would depend on where the piece lay. It might lay in a place where all the accretion came.

421 160 Q. Then suppose it lays at the lowest point of the island, at the lower end?

A. The question is if forty-nine acres increased to one hundred and thirty what would be the increase for the whole island?

161 Q. Yes, sir.

A. It must be nearly three times as large as it was in 1826, if it all increased the same.

162 Q. Have you ever surveyed the lower end of Green River Island?

A. No, sir. My father made a survey of it, I think, for Mr. Coleman at one time.

163 Q. Have you access to that survey now?

A. No; I have not. He made a measurement; I do not know whether it was just for the ground to be cultivated or what it was, but I recollect he made a survey at one time.

164 Q. I will ask you to examine the paper here shown you, purporting to be a survey of the lower end of the island, and state whether you can speak of its approximate correctness.

A. (After examining the paper referred to.) I could not say whether this is a correct plat of that island, but I presume it is. It shows about the shape of the lower end of the island and the river.

422 But this includes there all the land and gives the distances, it seems, from low-water mark in the river. Of course, we do not count in figuring the land—we do not figure down to the low-water mark at all. In regard to that other question about the number of acres and about the increase in proportion to those, there are a good many farms there that are a good part in the interior of that island and would not get any increase at all. It is just where the farms are on the river that get the increase, and you could not tell very well by a certain piece of ground increasing so much how much the whole island would increase. It would be just in proportion to how much river front it has, if it was all in-

creased the same. If a person's land was back on the island and did not have any river front, it would not get any increase at all.

165 Q. How far above the head of Green River Island is the line between Vanderburgh and Warrick counties?

A. Well, it must be three miles and a half or four miles, I guess, up the river.

166 Q. Is there or has there been at any time any controversy about the boundary line between Indiana and Kentucky, touching Warrick county?

A. Not that I know of.

And further the witness saith not.

(Signature waived.)

423 IRA FAIRCHILD, recalled by the complainant for further examination, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

20 Q. Have you ever been acquainted with Absalom Vann, who formerly lived in or near Knight township, in Vanderburgh county?

A. Yes, sir.

21 Q. You may state whether he is now living or whether he is dead.

A. He is dead.

Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

22 Q. Were you acquainted with Abram Franceway?

A. Yes, sir.

23 Q. Is he living or dead?

A. He is dead.

24 Q. Were you acquainted with Edmund Talbott, formerly of Henderson county, Kentucky?

A. I forget what his first name was. Talbott used to live above the mouth of Green river; old man Talbott used to live there. He is dead.

25 Q. The man of whom I speak was for many years surveyor of Henderson county.

A. I was not acquainted with him. I don't think he was up here, for this man was a big farmer; had a big farm up there.

424 26 Q. Do you know his first name?

A. No, sir; I do not. I do not remember it now.

27 Q. Did you know John E. McAlister, a farmer in Henderson county?

A. Yes, sir.

28 Q. Is he living or dead?

A. Dead, I believe.

And further the witness saith not.
(Signature waived.)

Mr. SNOW: I will now offer in evidence a certified copy from an official record of the executive department of the State of Indiana, which the notary will please mark as Exhibit "O" and attach it to the testimony.

The paper above referred to being in the words and figures following, to wit:

425 THURSDAY, *May* 13, 1875.

The following further proceedings were had:

In the Matter of Ascertaining and Fixing the Boundary Lines Between Kentucky and Indiana Above Evansville.

The following appointment was made:

The State of Indiana, by Thomas A. Hendricks, Governor, to all who shall see these presents, greeting:

Whereas it is provided by an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville and making the same evidence in any dispute and declaring an emergency," approved February 27, 1875, that the Governor be empowered and directed to select a commissioner, who shall be a resident of the State o Indiana and a practical surveyor, who shall act with a similar commissioner to be appointed by the Governor of the State of Kentucky and make a survey of the line dividing said States, beginning at the head of Green River Island, near and opposite to the mouth of Green river, and running thence down the Ohio river to the lower end of said island:

426 Therefore know ye that, reposing confidence in the diligence and ability of August Pfafflin, of Vanderburgh county, I do, in the name and by the authority of the State of Indiana, hereby appoint and commission the said August Pfafflin commissioner on the part of the State of Indiana to execute the purposes of the act aforesaid, to serve as such from this thirteenth day of May, 1875, during the pleasure of the appointing power.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at the city of Indianapo-
[SEAL.] lis, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy-five, the fifty-ninth year of the State, and of the Independence of the United States the ninety-ninth.

THOMAS A. HENDRICKS,
Governor of Indiana.

By the Governor:
JOHN E. NEFF,
Secretary of State.

427 WEDNESDAY, *July* 28, 1875.

The following further proceedings were had:

In the Matter of the Kentucky Boundary Line.

The Governor addressed the following communication to August Pfafflin, commissioner herein:

(Caption as above.)

August Pfafflin, Esq., Evansville, Indiana.

SIR: From information which I have received, I am of the opinion that the survey, so far as made by yourself and the commissioner representing the State of Kentucky, under the act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville and making the same evidence in any dispute and declaring an emergency," approved February 27, 1875, will have the effect to disturb the rightful boundary of the State of Indiana to her prejudice, and also to prejudice rights claimed by the citizens of Indiana. I have, therefore, to instruct you to suspend any further action under the law and your appointment until I have the subject thoroughly investigated. I have advised the Governor of Kentucky of my action herein.

Very respectfully, yours,

THOMAS A. HENDRICKS,
Governor of Indiana.

He also addressed the Governor of Kentucky, as follows:

428 "STATE OF INDIANA, EXECUTIVE DEPARTMENT,
"INDIANAPOLIS, *July* 28, 1875.

"His Excellency Preston H. Leslie, Governor of Kentucky.

"SIR: I respectfully transmit herewith a copy of a communication which I find it is my duty to make to the commissioner appointed by me on the part of the State of Indiana to ascertain and fix a disputed portion of the boundary line between this State and the State of Kentucky.

"Very respectfully, yours,

"THOMAS A. HENDRICKS,
"*Governor of Indiana.*"

A copy of the communication referred to was inclosed.

SAMUEL R. DOWNEY,
Private Secretary.

THURSDAY, *November* 4, 1875.

The following further proceedings were had:

In the Matter of the Kentucky Boundary Line.

429 The Governor addressed August Pfafflin, commissioner, as follows by telegraph:

"To August Pfafflin, Evansville, Indiana:

"I will be at Evansvilie to-morrow morning to investigate the survey. The State officers will accompany me. Please meet us at St. George Hotel at nine o'clock with your notes of the survey.

"T. A. HENDRICKS."

FRIDAY, *November* 5, 1875.

The following further proceedings were had:

In the Matter of the Kentucky Boundary Line.

The Governor, accompanied by the secretary, auditor, and treasurer of state, the attorney-general and State librarian, visited Evansville and inspected the work of the commissioner appointed herein.

FRIDAY, *November* 12, 1875.

The following further proceedings were had:

In the Matter of the Kentucky Boundary Line.

The following communication was addressed by the Governor:

STATE OF INDIANA, EXECUTIVE DEPARTMENT,
INDIANAPOLIS, *November* 12, 1875.

August Pfafflin, Esq., Evansville, Indiana.

430 DEAR SIR: On the 28th July last I instructed you to suspend any further action under the act of February 27, 1875, until I might have the questions arising upon the survey thoroughly investigated. I have received no reply from you or report of your proceedings up to that time. On the 5th instant, in company with the State officers, I visited the locality of the survey and found that you had adopted for the greater part the meander line run by the United States surveyor upon the bank of the Ohio river as controlling the survey, and had marked the same by stone monuments from a point above the head to a point opposite the foot of Green River Island.

The line as marked by yourself and the commissioner appointed on the part of Kentucky does not, in any part thereof, conform to the low-water mark of the river. The greatest part thereof is upon the bank, and the residue is at a distance from the bank, leaving a

considerable tract of land between it and the river. In no part does the survey conform to what was low-water mark at the time the State was admitted. I think a casual observation will satisfy any one of that fact. But were it otherwise, and had the low-water mark
431 become changed by gradual accretion of land, the jurisdiction of the State would extend over the land so made, as also would the ownership of the individual proprietors whose purchases extended to the river. The act of the Legislature requires you to consult and be governed by the surveys originally made by the United States, when not inconsistent with each other. If you found the meander line the only survey made by the United States it was proper for you to consult it, but I think it should not have been regarded as a line of boundary.

The act of Congress providing for a State constitution and government and for the admission of Indiana into the Union and the constitution of the State make the Ohio river the southern boundary. The Supreme Court of the United States has decided that the river not above low-water mark is the boundary, and not the meander lines that define its sinuosities. Meander lines are not lines of description and boundary. The Supreme Court of the United States thus describes their purposes and effect:

"Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the
432 banks of the stream and as the means of ascertaining the quantity of the land in the fraction subject to sale and which is to be paid for by the purchaser. In preparing the official plat from the first notes the meander line is represented as the border line of the stream, and shows to a demonstration that the watercourse and not the meander line as actually run on the land is the boundary."

If you found the meander line to be the United States survey which you were required to consult and by which you were to be governed, then I think you should have given that survey its legal effect instead of following its location upon the bank.

I think it entirely clear that no survey made by legislative authority can disturb the State boundary as fixed by the act of Congress and the State constitution, nor impair the rights of individuals whose lands extend to the river, but such a survey as has been made may excite distrust and controversy. Before the execution of the act under which you were appointed shall be consummated opportunity should be given the Legislature again to consider the subject and to take such action as may be found proper.

I have, therefore, to instruct you to proceed no further under your appointment by filing for record any description of
433 your survey or otherwise. The views which I have expressed are concurred in by the attorney general and by the other State officers.

There seems to be an opinion quite general that your survey will have the effect to fix State jurisdiction over Green River Island. It is hardly necessary for me to say that there is no foundation for

such opinion. The survey has no relation whatever to the question of jurisdiction over that island. Please make proof of the value of your services before the judge of the Vanderburgh circuit court, as required by the act, that the amount by him approved within the limit of the appropriation may be paid. Be pleased, also, to make a full report of your proceedings under your appointment.

Very respectfully yours,

THOMAS A. HENDRICKS,
Governor of Indiana.

434 STATE OF INDIANA, EXECUTIVE DEPARTMENT.

Know ye that I, Isaac P. Gray, Governor of the State of Indiana, do hereby certify that the above and foregoing extracts are full, true, and correct copies from the records in the office of the Governor of the State of Indiana, and are duly recorded on pages 25, 147, 296, 298, and 313, in volume 5 of the Official Record, Executive Department of the State of Indiana, of which record I am the legal custodian.

[SEAL.] In witness whereof I have hereunto set my hand and caused to be affixed the seal of the State, at the city of Indianapolis, this 25th day of September, 1888.

ISAAC P. GRAY.

By the Governor:
CHARLES F. GRIFFIN,
Secretary of State.

435 Mr. SNOW: I also offer in evidence a certified copy of the record of Governor Hendricks' message of January, 1877, to the General Assembly of the State of Indiana, pertaining to the boundary line dividing Indiana and Kentucky, which the notary will please mark as Exhibit "P" and attach it to the testimony.

The paper above referred to being in the words and figures following, to wit:

436 "*State Boundary Line.*"

By the act of February 27th, 1875, I was empowered and directed to select a commissioner, resident of this State and a practical surveyor, who should act with a similar commissioner to be appointed by the Governor of the State of Kentucky, to make a survey of the line dividing the States of Indiana and Kentucky so far as the same is opposite to Green River Island. In pursuance of that requirement I appointed August Pfafflin, who was the county surveyor of Vanderburgh county, as such commissioner and surveyor on the part of this State. By said act it was provided that the commissioners should consult and be governed by the surveys originally made by the Government of the United States, and that their survey should be established and marked by proper monuments along the line. It was further provided that a written description of such

survey should be recorded in the offices of the recorders of the counties of Vanderburgh and Warrick, and that the original should be filed in the office of the secretary of state, and that the same should be conclusive evidence in any of the courts of this State of the boundary line between said States opposite to the said island.

During the progress of the survey I learned that the com-
437 missioners had adopted, as the only surveys made by the United States, the lines commonly known as the meander lines, and that such lines did not, in fact, conform to the true boundary lines of the State. Because of its importance I felt it my duty to make a personal examination of the survey, and for that purpose, in company with the secretary of state, the auditor of state, the treasurer of state, and the attorney general, I visited the locality and carefully examined the survey. Green River Island lies a few miles above the city of Evansville, near the Indiana shore, and opposite to the counties of Vanderburgh & Warrick. The survey was made in conformity with the meander lines of the United States survey and it is for much of the distance upon the Indiana bank, and is, in many places, a number of rods above low-water mark. Could the boundary line become thus established, the effect would be to throw a narrow strip throughout the greater distance of the survey into the State of Kentucky, and at one point a number of acres, and to disturb the rights of individual proprietors. The lowest water mark of the Ohio river is the established southern boundary of the State, and cannot, as I believe, be changed by the State legislation even if both States concur therein; but I thought such a survey so made might become the occasion of a conflict of State jurisdiction, and bring a confusion into the claims and rights of individuals.

438 Therefore, with the concurrence of the State officers, I directed the commissioner on our part to proceed no further. The survey had, in fact, been made and marked, but no record thereof had been made nor has any record yet been made in the counties of Vanderburgh and Warrick, as I understand, nor has the original survey been filed in the office of the secretary of state. I am satisfied that the boundary line at that locality should be surveyed and marked, but it should be, in accordance with the established rights of the State, at low-water mark. I recommend that the law be so amended as to provide for a survey in accordance with the true boundary of the State, and that the survey already made be declared null & void. I will refer to your bodies a communication addressed to me by the citizens of this State, who claim that they are likely to become involved in expensive litigation because of this survey. They are owners of lands the boundary of which, in part, is the same with the State boundary. I ask your consideration of their petition, and should it be found that the action of the State in authorizing the survey has confused their rights and involved

439 them in litigation it is but equitable and just that the State should be at the expense of employing counsel to represent them in that litigation.

Certificate.

STATE OF INDIANA, } ss:
Office of the Secretary of State, }

I, Charles F. Griffin, secretary of state of the State of Indiana, do hereby certify that the above and foregoing is a full, true, and complete copy of that portion of the message of Hon. Thomas A. Hendricks, Governor of the State of Indiana, to the fiftieth regular session of the General Assembly of the State of Indiana pertaining to the "boundary line" dividing the States of Indiana and Kentucky, as the same appears of record in the journal of said General Assembly, now on file in my office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of the State of Indiana, at the city of Indianapolis, this 24th day of September, A. D. 1888.

CHARLES F. GRIFFIN,
Secretary of State.

440 FRIDAY, *September 28th*, 1888—8.30 o'clock a. m.

The parties met pursuant to adjournment.

Present: The same as on yesterday.

The taking of the depositions was resumed as follows:

JAMES D. PARVIN, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. State your name.

A. James D. Parvin.

2 Q. State your residence.

A. Evansville, Indiana.

3 Q. You may state if you hold any official position in Vanderburgh county; and, if so, what.

A. I am auditor of Vanderburgh county.

4 Q. You may state whether you have carefully compared the paper marked Exhibit "L" with the paper of which it purports to be a copy.

A. Yes, sir.

5 Q. Is the paper of which Exhibit "L" is a copy on file in your office?

A. Yes, sir.

6 Q. Is that paper of which Exhibit "L" is a copy an original paper?

441 A. Yes, sir. You mean this paper (indicating)?

7 Q. Yes, sir.

A. Yes, sir. The only way I have of knowing that is by its being attached to the original paper.

8 Q. I am speaking of the whole thing.
A. Oh, yes, sir; the whole thing. It is the original paper.
9 Q. You may state whether or not the original paper of which Exhibit "L" is a copy is recorded in your office or not.
A. No, sir; it is not, so far as we can find.
10 Q. Have you made a search with the object of finding out whether such paper is recorded or not?
A. Yes, sir.

Mr. SNOW: You may cross-examine the witness, Mr. Cunningham.
Mr. CUNNINGHAM: I do not care to ask Mr. Parvin anything.

And further the witness saith not.
(Signature waived.)

442 LOUIS SIHLER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. What is your name?
A. Louis Sihler.
2 Q. What is your residence?
A. Evansville, Indiana.
3 Q. You may state whether you hold any official position in Vanderburgh county; and, if so, what.
A. Recorder.
4 Q. How long have you been recorder of Vanderburgh county?
A. I was elected about four years ago, and before that I was deputy recorder, since about 1873.
5 Q. Have you been continuously since 1873 deputy recorder and recorder up to the present time?
A. Yes, sir; only a short, little time—about half a year.
6 Q. What year was that?
A. That was in 1882 or 1883.
7 Q. Have you during all that time been familiar with the papers which have been filed in this office for record?
A. Yes, sir.
443 8 Q. And with the recording of the papers in that office, the recorder's office?
A. Yes, sir.
9 Q. You may examine the paper marked Exhibit "L."
A. I have seen it. There is nothing of the kind on record and never left here.
10 Q. Has any paper the original or copy of Exhibit "L" ever been filed for record in the recorder's office of Vanderburgh county?
A. No, sir; never.
11 Q. And has any paper the original or copy of Exhibit "L" been recorded in the recorder's office of Vanderburgh county?
A. No, sir.

12 Q. Have you ever made a search to find whether a paper the original or a copy of the paper marked Exhibit "L" has ever been filed or recorded here?

A. I did.

13 Q. In what year was that?

A. I expect it was in 1885 or 1884. I was elected, and right away after that I got some letter from some firm, and I looked all over it but I couldn't find anything.

14 Q. Do you know whether a paper a copy or the original of the paper marked Exhibit "L" has been filed or recorded since the time of your search, in 1885?

A. No, sir; there has not been any such here.

444 Cross-examination.

Questions by R. H. CUNNINGHAM, Esq.:

15 Q. Do you know that the original paper of which this is a copy was never lodged in the recorder's office of Vanderburgh county?

A. It was never lodged in this office.

And further the witness saith not.
(Signature waived.)

SEBASTIAN HENRICH, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by ALPHEUS H. SNOW, Esq.:

1 Q. What is your name?

A. Sebastian Henrich.

2 Q. Where is your residence?

A. Evansville, Indiana.

3 Q. You may state whether you have ever held any official position in Vanderburgh county; and, if so, what.

A. I was deputy auditor of Vanderburgh county.

4 Q. During what years were you deputy auditor of Vanderburgh county?

A. 1874 to 1878.

445 5 Q. You may state whether during the time you were deputy auditor a paper of which Exhibit "L" is a copy was filed in the auditor's office.

A. It was.

6 Q. By whom was it filed?

A. By Mr. Pfafflin—August Pfafflin.

7 Q. Do you mean the same Mr. Pfafflin who was a commissioner to run the boundary line?

A. I do.

8 Q. Did you receive the paper?

A. I did.

9 Q. Did you or did you not make an entry of filing the paper?
A. I made no entry of filing or any record. I marked it filed.
10 Q. You may state whether during the time while you were deputy auditor the paper was ever removed from the office; and, if so, for what reason.
A. It was removed at the time that Governor Hendricks came here and investigated the matter, as I understood. It was taken out by his secretary, Mr. Whittlesey.
11 Q. You may state whether during the time you held the office of deputy auditor it was returned.
A. It was returned by Mr. Whittlesey.
12 Q. You may state whether you have made any examination of the papers in the auditor's office, and whether the original paper which was brought to the auditor's office and deposited by
446 by Mr. Pfafflin is now on file in the auditor's office of Vanderburgh county.
A. I have examined and find it still on file.
13 Q. You may state, if you are able, during the time you were deputy auditor whether the paper of which Exhibit "L" is a copy was ever recorded in the auditor's office?
A. It was not recorded.

Cross-examination.

Questions by R. H. CUNNINGHAM:

14 Q. Why was it not recorded?
A. I could not say.
15 Q. Was not the auditor instructed by Governor Hendricks not to record it?
A. Not to my knowledge.
16 Q. What is your information?
A. I have no information on that point.
17 Q. Do you remember the circumstances of this report being filed?
A. I do.
18 Q. You say it was filed by Mr. August Pfafflin?
A. Yes, sir.
19 Q. Did he make any statement at the time of filing it as to why he brought it to the auditor's office?
A. If he did I do not now remember what it was.
20 Q. Did he not ask that it be recorded when it was filed?
A. Not to my recollection.
447 21 Q. What instruction did he give when he filed it?
A. I remember no instruction on his part, except that he wished to deposit the paper in that office.
22 Q. He wished to deposit the paper?
A. Yes, sir.
23 Q. Did the auditor receive any instructions from any one with reference to that paper?
A. Not to my knowledge.
24 Q. Who was then the auditor?

A. Joseph J. Reitz.
25 Q. Is he still living?
A. Yes, sir.
25½ Q. Where does he live?
A. In Evansville, Indiana.

Re-examination.

Questions by ALPHEUS H. SNOW, Esq.:

26 Q. Have you examined the original paper of which Exhibit "L" is a copy, in the auditor's office, with reference to noticing the date of the file-mark on the paper?
A. I have.
27 Q. You may state what the file-mark on the paper is.
A. "Filed August 12, 1875. Joseph J. Reitz, A. V. C., per S. Henrichs."
28 Q. Was the original paper of which Exhibit "L" is a copy filed on August 12, 1875?
A. It was.

And further the witness saith not.
(Signature waived.)

448 Mr. SNOW: I will offer in evidence the certified copy of the records in the case of John Garrett against Jackson McClain and others, taken from the records of the Henderson circuit court, of Henderson county, Kentucky; and also the certified copies of the depositions of William Whittlesey, George Lynxwiler, Lewis James, Isaac Knight, Clara McCallister, Absalom Vann, Jesse Lane, Jonathan W. Cochran, John Parker, John Q. Lane, Corrydon Garrett, and John McCallister, in the same case, and the map attached to the deposition of William Whittlesey. The notary will please mark these as Exhibit "Q" and attach them to the testimony.

The papers above referred to being in the words and figures following, to wit:

449 COMMONWEALTH OF KENTUCKY, *Henderson Circuit:*

Causes before Benjamin Shackelford, judge of the circuit court for Henderson county, on the 27th day of March, 1843.

JOHN GARRETT, Complainant,
against
JACKSON MCCLAIN, LEVI JONES, and JAMES ROUSE, Defendants. } In Chancery.

Be it remembered that heretofore, to wit, at a circuit court held for Henderson county, at the court-house, in the town of Henderson, on the 1st day of July, 1842, come the complainant and made oath to and filed his bill, and by his counsel moved the court to grant him an injunction according to the prayer thereof, and the said bill, being read & heard, the premises seen and by the court fully under-

stood, it is ordered that an injunction issue agreeably to the prayer of said bill, upon the said complainant's executing bond, in the clerk's office of this court, in the penalty of fifteen hundred dollars, with good security, conditioned according to law, the security
450 by consent to be approved of by the clerk of this court; and thereupon the complainant, having leave, filed two amended bills & made oath to the same in open court.

Which said bill and amended bills read as follows, to wit:

"STATE OF KENTUCKY, *Henderson County:*

In the Henderson Circuit Court, of the Term of June, 1842.

To the honorable the judge of the Henderson circuit court, in chancery sitting:

Humbly complaining, sheweth unto your honor your orator, John Garrett, that he resides and is living upon a tract of land called Green River Island; that he has been residing there for several years last past, and that some three or four years ago one Levi Jones set up a claim to that part of said supposed island occupied and possessed by your orator, and upon which your orator had made lasting and valuable improvements, and that on or about the 26th day of October, A. D. 1841, the said Levi Jones informed your orator that he was the owner absolutely of the tract of land then and hitherto claimed and occupied by your orator; that he held under one Slaughter, whom, as the said Jones represented, held said land under a survey and location made by virtue of a mili-
451 tary land warrant issued by the State of Virginia, the said Jones, on or about the day and year aforesaid, assuring your orator that his (said Jones') title to said land was undisputed; that he had made full payment therefor to Slaughter, and that Slaughter's title had been confirmed by the "Federal court." Your orator avers and charges that from the statements and representations of Jones he purchased of the said Jones the said tract of land, which is known and described substantially as follows, being one hundred acres of land situate on what is called Green River Island: Beginning on the bank of the Ohio at the center or middle of the lane dividing the possessions of the said John Garrett and Abram Franceway, running thence along the middle of said lane to the bayou; thence down the bank or magin of the bayou to a point from which a line drawn parallel with said lane to the Ohio river and up said river to the beginning will include one hundred acres, and for which your orator agreed to pay the sum of one thousand dollars, $420 of which sum your orator paid down and gave his note, with Corydon Garrett as security, to the said Levi Jones for 676 dollars & fifty cents, which note bears date 26th day of October, 1841, with an agreement that said note should be reduced down by endorsement to make it & the money
452 amount to the $1,000, which said note was, on the 29th day of October, 1841, assigned by said Levi Jones to one James

Rouse; and on the 21st day of March, 1842, the said James Rouse assigned said note to one Jackson McClain, a copy of which note, with the before-mentioned assignments upon it, is herewith filed and prayed to be made a part of this bill, and marked (A). At the time of the purchase aforesaid of the said tract of land Jones conveyed said tract of land to your orator and gave to your orator an instrument in writing, bearing date the 26th day of October, 1841, acknowledging the sale of said land to your orator and obligating himself to perfect in himself and your orator as grantee, a perfect title to the said tract of land without unnecessary delay, which said instrument in writing is herewith filed & marked (B), and is prayed to be taken as part of this bill. Your orator further avers and charges that the said Jackson McClain, at the present term of the Henderson circuit court and on the common-law side thereof, obtained a judgement by default against your orator upon said note, a copy of which judgement at law and all of the papers & proceedings therein, as the same remain of record and on file on the common-law side of this honorable court, will be filed, and are
453 prayed to be taken as a part of this bill. Your orator is informed, and believes and charges, that since the rendition of said judgement the said Jackson McClain has caused a *fieri facias* to be issued and placed in the hands of the sheriff of Henderson county for the purpose of enforcing the payment of said judgement so as aforesaid obtained, which judgement your orator is informed, and verily believes & charges, is fraudulent & utterly null and void, because, he says, that the process in the said common-law suit was served upon him at his own house and residence on the said one hundred acres of land mentioned in this bill, and not elsewhere, which said house and residence and land are situate, lying, and being to the northwest of the Ohio river and north of the mouth of Green river and, as your orator verily believes & charges, beyond the territorial limits of the State of Kentucky, and consequently beyond the jurisdiction of this court, and that the service of the said process, so as aforesaid made by the sheriff of Henderson county by his deputy, was utterly null and void, and that the judgment & proceedings of this court in rendering said judgment are null and void and of no effect.

Your orator pleads and relies upon the want of jurisdiction
454 of the Henderson circuit court to send and execute its process upon persons residing and being to the northwest of the river Ohio for any purposes whatever. Your orator avers and charges that the said Levi Jones never had either a legal or equitable title to said one hundred acres of land, and that all of his representations in relation to his right and title to said land were false, corrupt, and fraudulent and were made with a view to cheat and defraud your orator, and that he could not then nor can he now make to your orator a good and valid title to said land. Your orator avers and charges that the said Slaughter, under whom Jones pretends to claim, never had any right or title to said land, because, he says, that the said military land warrant, under which said land is said to have been located by Slaughter, did not authorize or permit land that

lay to the northwest of the River Ohio and north of the mouth of Green river to be located.

Your orator avers and charges that the said James Rouse and the said Jackson McClain both knew the consideration for which said note was given at the time they respectively took the assignment thereof, and of the equity of your orator in the premises and
455 of the utter inability of the said Jones to make your orator a good and valid title to said one hundred acres of land.

Your orator further charges that the said Levi Jones now is a non-resident of the State of Kentucky and of the United States, and is said to be a citizen of the Republic of Texas, which prevents your orator from any proceeding against the said Jones at law upon any covenant that may be contained in the said deed from the said Jones to your orator for the said one hundred acres of land; nevertheless the said Jackson McClain, well knowing the premises and craftily and subtly intending to cheat and defraud your orator, has combined with the said James Rouse and the said Levi Jones and others, their confederates, for that purpose. And for that your orator is remediless in the premises by the strict rules of the common law and relievable only in a court of equity, where matters of this kind are properly cognizable, to the end, therefore, that justice may be done your orator in the premises, he prays that the said Jackson McClain, James Rouse & Levi Jones may be made defendants hereto, with apt and sufficient words to charge them in the premises, and that they be compelled to appear and answer the several allegations contained in this bill as fully and absolutely as if again re-
456 peated by way of special interrogatory, and that the said Jones be compelled to exhibit and file in this court a good and perfect title from the Government down to himself, for the inspection of the court, in and to the one hundred acres of land conveyed by him to your orator as aforesaid, and that he be compelled to perfect the title in your orator; and in case of his failure to exhibit a good and valid title to said land and perfect the same in your orator, he then prays that the contract and sale of said land from the said Jones to your orator be cancelled and set aside, and that he be compelled to refund to your orator the $420.00 paid to him as aforesaid, with interest thereon from the time of payment; and that inasmuch as your orator was in possession of the land, claiming the same under an adverse title to that of Jones, at and prior to the time of the contract aforesaid with said Jones, and inasmuch as the whole conduct and proceedings of Jones with your orator in relation to the land aforesaid was false and fraudulent, and prosecuted by him for the purpose of cheating and swindling your orator out of his money, even if the land should be found to lie in the State of Kentucky, he prays to be permitted to retain the possession thereof on a rescission of the contract.

Your orator prays for the commissioner's writ of subpœna
457 against said defendants, with injunction enjoining and restraining the said Jackson McClain, the sheriff of Henderson county, and all others from any other and further proceedings on the judgment at law until the matters herein contained can be heard in

equity; and upon the final hearing of this cause, in case the said Jones shall fail to exhibit a good and perfect title to said 100 acres of land and perfect the same in your orator, he then prays that his injunction be perpetuated, and for all equitable relief, &c.

LOCKHART & HART, *P. C.*"

All errors in the judgment at law hereby prayed to be enjoined are hereby released.

JOHN GARRETT.

"The two amended bills mentioned in the above order read as follows, to wit:

In the Henderson Circuit Court, of the Term of June, 1842.

JOHN GARRETT
vs.
JACKSON MCCLAIN, JAMES ROUSE, & LEVI JONES. } In Chancery.

An amendment to the original bill exhibited in this court by John Garrett against Jackson McClain, James Rouse, & Levi Jones in the Henderson circuit court at its present term.

458 This complainant, in addition to what is already charged in his original bill, further charges that the said Levi Jones has not complied with one of the provisions and requisitions mentioned and contained in Exhibit (B) to the original bill of this complainant, either by perfecting title in himself or in this complainant, nor has any other person or persons for him complied with any of the provisions and requisitions of said Exhibit (B) in any manner whatever, either by perfecting title in said Jones or in this complainant.

This complainant is informed, and verily believes and expressly charges, that said Levi Jones never had any equitable title to said one hundred acres of land in complainant's original bill mentioned, and that he has not, since the execution of said Exhibit (B), ever had either an equitable or legal title to said land, and that all of his representations in the premises were false, corrupt, and fraudulent, and made for the purpose of cheating and defrauding this complainant.

This complainant further avers and charges that after the note upon which the said McClain obtained judgment in this court was given, as stated in the original bill of this complainant, it
459 was expressly agreed by and between the said Jones and this complainant, the said complainant having paid the said Jones a valuable consideration therefor, that he, Jones, would endorse the said note down, so that the money paid by this respondent to said Jones & the note would just make the sum of one thousand dollars, and that this agreement was made before Jones assigned said note to James Rouse.

This complainant further avers and charges that the said Jackson

McClain recovered judgment for the full amount of said note, as by reference to the judgment & proceedings therein, which are made a part of the original bill herein, fully appears, which credit amounts to about the sum of ninety-six dollars.

LOCKHART & HART,
Compl't's Sol's.

To the honorable judge of the Henderson circuit court, in chancery sitting:

Your orator, John Garrett, begs leave to amend his original bill filed in this court against Levi Jones, James Rouse, and Jackson McClain, and to state that about eight years ago he settled on the land where he now resides under a Treasury warrant claim
460 from the State of Kentucky, which was carried into grant and the patent issued in the name of John Slaton or Burney Hancock, and that he obtained a conveyance for the same from the said Hancock, which is now of record in the office of the Henderson county court, a copy of which, together with the patent aforesaid and the intermediate conveyances down to himself, will be filed herewith in due time as part of this bill. He further charges that in the year 1841 the said Levi Jones came to his house and set up claim to the land, stating that he had bought the same of Slaughter or those claiming under him, he does not now recollect which; that the land was patented to Slaughter in consideration of military services, and that he, Jones, had a good and valid title to the same. He proposed to sell the same to your orator, and your orator, believing that his claim was superior to that under which he had taken possession, was induced to purchase 100 acres of him, including his improvement aforesaid, and received a deed from him for the same, together with his bond obliging him to perfect the title in himself and your orator, and which is made a part of his original bill. He further states that at the time of the contract he paid to the said Jones the sum of $420.00, or a little upwards, and executed his
461 note for the balance of the consideration agreed to be given for said land, amounting to upwards of $600.00, and is the same set out in his original bill. He further charges that at the time of the contract with the said Jones for the land aforesaid he was made to believe by the said Jones that he could and would make him a good and valid title to the same, but he has since ascertained that he was then and is now wholly unable to do so, and that he has not now nor had he ever any good and valid title in either law or equity to the same, and that he had not bought or procured the title of Slaughter or those that claimed under him to said land, and that all his representations in relation to his pretended title were false and fraudulent and made for the purpose of cheating and swindling your orator out of his money.

Your orator further charges that the said Jones has hitherto wholly failed and refused to perfect title to said land in himself and your orator, as he bound himself to do by his obligations set up in his original bill and, as your orator verily believes and charges, will forever remain unable to do so. He also charges that the said Jones

is a non-resident of the State of Kentucky and of the United
462 States of America and, as he is informed and charges, is hopelessly insolvent. Your orator states that all he asks is a specific execution of the contract referred to and made a part of his original bill; he there requires and calls on the said Jones to exhibit for inspection of this court a good and perfect title to the said 100 acres of land in his original bill mentioned, and convey the same to your orator, and he or his assignee shall then have the balance of the consideration money not paid; but in case of his failure to exhibit such title he then prays for a rescission of the contract, and that he be compelled to refund to your orator the $420.00 paid to him as aforesaid, with interest.

Your orator prays as in his original bill, &c.

HART, *P. C.*"

"The exhibits mentioned & made part of the original and amended bills are as follows, viz:

Note from Garrett to Jones, marked (A), $676.50:

One hundred & fifty days after date we or either of us promise to pay to Levi Jones or order the sum of six hundred & seventy-six and a half dollars, for value received.

463 Witness our hands this 26th day of October, 1841.

Witness:

JOHN GARRETT.
CORYDON GARRETT.

"The within I assign to Jas. Rouse, for value received, with the understanding distinctly that it is to be credited with one hundred & seventy-six dollars, provided the residue is paid punctually, with interest from this date.

Witness my hand — 29th Oct., 1841.

LEVI JONES.

I assign the within note to Jackson McClain, for valued received, March 21st, 1842.

JAMES ROUSE.

EXHIBIT B.

Bond of Jones & Fowler to Garrett.

"Know all men by these presents that whereas Levi Jones has this day sold & conveyed to John Garrett one hundred acres of land, situate on Green River Island, as per deed of this date, to which it is said that said Jones had only an equitable title: Now it is hereby understood and agreed that the said Levi Jones shall proceed without unnecessary delay to proceed & perfect the legal title to said land in said Jones & also said Garrett as the grantee of said Jones.

Witness our hands & seals this 26th day of October, A. D. 1841.

LEVI JONES,
THOMAS TOWLES, JR.

464 The common-law papers & judgment mentioned as an exhibit are as follows, to wit:

On the 19th day of May, 1842, Jackson McClain, plaintiff, commenced his suit by filing his petition, & which follows, viz:

"HENDERSON CIRCUIT, *sct.*:

Jackson McClain, plaintiff, states that he holds a note on the defendants, John Garrett, *alias* John Garrett, and Corrydon Garrett, in substance as followeth: $676.50.

One hundred and fifty days after date we or either of us promise to pay to Levi Jones or order the sum of six hundred and seventy-six and a half dollars, for value received.

Witness our hands this 26th day of October, 1841.

Witness:

JOHN GARRETT.
CORYDON GARRETT.

On which are the following assignments:

"The within I assign to Jas. Rouse, for value received, with the understanding distinctly that it is to be credited with one hundred & seventy-six dollars, provided the residue is paid punctually, with interest from this date.

Witness my hand 29th Oct., 1841.

LEVI JONES."

465 I assign the within note to Jackson McClain, for value received, March 21st, 1842.

JAS. ROUSE.

Whereby the plaintiff hath become the proprietor thereof, of which the defendants have had due notice, yet the said debt remains unpaid; wherefore he prays judgment for his debt and damages for the detention of the same, together with his costs, &c.

JACKSON McCLAIN.
POWELL, *Att'y.*

"The Commonwealth of Kentucky to the sheriff of Henderson county, Greeting:

We command you to summon Jno. Garrett, *alias* John Garrett, & Corydon Garrett to appear before the judge of the Henderson circuit court, at the court-house, in the town of Henderson, on the 1st day of our next June term, to answer Jackson McClain, ass'n- of Jas. Rouse, who was ass'n- of Levi Jones, of a plea of debt, by petition & summons, for six hundred and seventy-six dollars 50 cts.; and have then there this writ.

Witness William D. Allison, clerk of our said court, at the court-house aforesaid, the 19th day of May, 1842, and in the 50th year of the Commonwealth.

WILL. D. ALLISON.

466 Executed on John Garrett June 17th, 1842; the other defendant not found.

S. W. LANGLEY, *D. S.*,
For JNO. GREEN, *S., H. C.*

And afterwards, to wit, at a circuit court held for Henderson county, on the 27th day of June, 1842, this suit was continued."

And afterwards, at the same term, to wit, at a circuit court held for the county of Henderson, on the 28th day of June, 1842—

"Came the plaintiff aforesaid, by his attorney, and on his motion it is ordered that the order of continuance entered in this lease at the present term be set aside; and, the sheriff having returned that def't, Corydon Garrett, was not found, it is ordered that this suit abate as to him; and the def't, John Garrett, although duly served with process & now solemnly called, came not, but made default. It is therefore considered by the court that the plaintiff recover against the said def't, John Garrett, the sum of six hundred and seventy-six dollars 50 cts., the debt in the petition mentioned, with interest thereon, at the rate of six per cent. per annum, from the 25th March, 1842, till paid; also his costs in this behalf expended; & the defendant in mercy, &c."

467 And afterwards, at the same term, to wit, at a circuit court held for Henderson county, on the 28th day of June, 1842, "came the plaintiff aforesaid in his proper person, and, on his motion & for sufficient reasons appearing to the court, it is ordered that the said plaintiff may have execution upon the judgment rendered herein this day immediately."

The deed- referred to in the second amended bill are as follows. The patent mentioned has not been filed.

This indenture, made this first day of March, in the year of our Lord 1830, between John Slaton, of the county of Henderson and State of Kentucky, of the one part, and Burney Hancock, of the same county and State, of the other part, witnesseth:

That the said John Slaton, for and in consideration of fifty dollars, in hand paid by the said Burney Hancock, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and confirmed, and by these presents do- hereby sell and confirm, unto the said Burney Hancock a certain tract or parcel of land lying in the Green River Island, in Henderson county, to wit: Beginning at a cotton-wood standing on the south bank of said
468 island, running N. 26 W. 7 poles to a cotton-wood; thence N. 35 W. 33 poles to a hackberry; thence N. 40 W. 40 poles to a pawpaw; thence N. 60 W. 26 poles to a box elder; thence N. 70 W. 100 poles to hackberry; thence N. 87 W. 430 poles to a box elder; thence S. 10 E. 160 poles to 2 cotton-woods on the bank of the river; thence up the river, with the meanders thereof, to the beginning, containing four hundred acres, with its appurtenances; to have and hold the said tract or parcel of land, with its

appurtenances, to the said Burney Hancock and his heirs forever, free from the claim and claims of the said John Slaton, his heirs, forever.

In testimony whereof I, the said John Slaton, have hereunto set my hand and affixed my seal the first day of March, 1830.

JOHN SLADYEN.

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from John Sladyen to Burney Hancock was produced to me in my office by the grantor, and acknowledged by the said John Sladyen to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office the 1st day of March, 1830.

WILL. D. ALLISON.

A copy.
Att.: WILL. D. ALLISON, *Cl'k.*

469 This indenture, made and entered into this sixth day of September, in the year 1841, between Burney Hancock and John Garrett, of the county of Henderson & State of Kentucky, witnesseth: That for and in consideration of the sum of two hundred dollars, by the said Garrett to the said Hancock in hand paid, the receipt whereof is hereby acknowledged, he, the said Hancock, has this day granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, alien, convey, and confirm, unto the said Garrett, his heirs and assigns, forever all that tract or parcel of land situate, lying, and being in the county & State aforesaid, on Green River Island, and bounded as follows, to wit: Beginning at a black walnut stump near the Ohio river, thence N. 6 E. $88\frac{75}{100}$ poles to a stake in Hancock's back line; thence with said line N. 80 W. 125 poles to a stake in Phillip's line; thence with said line S. 6 W. 107 poles to Phillip's corner, on the bank of the Ohio river; thence up the river N. 84 E. 49 poles, S. 85 E. $78\frac{25}{100}$ poles to the beginning, containing sixty-nine & three-quarters acres, more or less; to have and to hold the above-described land and every part & parcel thereof to him, the said Garrett, his heirs and assigns, forever, together with all and
470 singular the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, free and clear from the claim or claims, disturbance or disturbances, of him, the said Hancock, his heirs, & all & every person or persons claiming by, through, or under him or them, but with no other or further warranty whatever.

In testimony whereof I have hereunto set my hand and affixed my seal this day and date first above written.

[SEAL.] B. HANCOCK.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Burney Hancock to John Garrett was this day acknowledged before me, in my office, by the said Burney Hancock to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 6th day of September, 1841.

WILL. D. ALLISON.

A copy.
Test: WILL. D. ALLISON, *Cl'k.*

And afterwards, to wit, on the 7th day of July, 1842, said Garrett, with John T. Wakon and Bailey Gibson, his securities, executed an injunction bond which reads as follows, to wit:

471 Know all men by these presents that we, John Garrett, John T. Wakon, and Bailey Gibson, are held & firmly bound unto Jackson McClain in the penalty of fifteen hundred dollars; for the payment of which, well and truly to be made to the said Jackson McClain, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands, sealed with our seals, and dated this 7th day of July, 1842.

The condition of the above obligation is such that whereas the above-bound John Garrett has filed his bill in chancery in the Henderson circuit court against the said Jackson McClain, Levi Jones, & others, defendants, and obtained from the said Henderson circuit court an injunction enjoining and restraining the said Jackson McClain, the sheriff of Henderson county, and all others from having any other or further proceedings on a judgment at law rendered in the Henderson circuit court, at the June term thereof, in the year 1842, in favor of said Jackson McClain against the said John Garrett, for the sum of six hundred & seventy-six dollars and 50 cents debt, with interest thereon, at the rate of six per cent. per annum, from the 25th day of March, 1842, till paid, and his
472 costs in that behalf expended; and also to enjoin & restrain the sheriff from having any further proceedings on an execution, now in his hands, against said Garrett, which issued upon the judgment aforesaid, until the matters of said bill can be heard and decided upon in equity: Now, if the said John Garrett, in case his said injunction is dissolved in the whole or in part, shall well and truly pay & satisfy the said judgment at law, with all interest & costs, to the said Jackson McClain, or his assigns, and shall well and truly pay all money and tobacco & costs due, or to become due, to the said Jackson McClain, and also shall pay all such costs & damages as may be adjudged to said dissolution of his injunction, then

the above obligation to be void; otherwise to remain in full force and virtue in law.

JNO. GARRETT.
JOHN T. T. WAKON.
BAILEY M. GIBSON.

Attest: WILL. D. ALLISON, *Clk.*

I, William D. Allison, clerk of the Henderson circuit court, in the State of Kentucky, do certify that John T. Wakon & Bailey Gibson, securities in this bond, before signing the same, made oath before me in due form of law that they are able to pay the amount of this bond after the payment of their just debts.

Done in my office this 7th day of July, 1842. Witness my hand.

WILL. D. ALLISON.

473 And afterwards, to wit, at a circuit court held for Henderson county, on Wednesday, the 22nd day of March, 1843—

"Came the parties, by their counsel, & it is ordered that the motion to dissolve complainant's injunction upon notice given, &c., be continued until to-morrow, and defendant McClain filed the notice in court."

The notice above mentioned reads as follows, to wit:

"Mr. John Garrett.

SIR: Take notice that on (Wednesday) the third day of the next March term of the Henderson circuit court, upon the bill and answers filed in a certain suit in chancery, now depending in the Henderson circuit court, wherein you are complainant and Levi Jones, James Rouse, and myself are defendants, I shall move said court to dissolve an injunction obtained by you on a bill filed by you in the aforesaid suit at the June term, 1842, of said court, enjoining a judgment recovered by me against you at the June term, 1842, of said court for the sum of $676.50, with interest, & costs of this suit.

Henderson, February 23rd, 1843.

JACKSON McCLAIN,
By POWELL, *Att'y.*"

474 "Left a copy of the within at John Garrett's place of residence 28th Feb., 1843.

S. W. LANGLEY, *D. S.*"

The answers mentioned in the above notice, with the endorsements thereon, read as follows, to wit:

STATE OF KENTUCKY, *Henderson County,* } *ss:*

The answer of Levi Jones to a bill in chancery exhibited against himself, James Rouse, & Jackson McClain in the Henderson circuit court by John Garrett respectfully represents that this respondent, saving & reserving to himself all benefit of the many errors & false

statements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answers and says that true it is that in the month of October, 1841, this respondent sold and conveyed to the said Garrett the land mentioned in said bill of complaint, by deed which was made by this respondent and accepted by said Garrett, not, however, under the circumstances or with the representations as set forth in said bill of complaint, but under the circumstances & with the representations which follow, viz: This respondent, having held for many years past the equitable —, as he believed,
475 to a tract of military land of six hundred acres patented to John Slaughter, of which the land mentioned in complainant's bill formed a part, had prosecuted a suit in ejectment in the name of said Slaughter's heirs to judgment in the Federal court for the district of Kentucky, upon which the writ of *habere facias possessionem* having been issued, with an endorsement requiring the marshal of the State aforesaid to deliver the possession to the respondent, he (respondent) went upon the land with the marshal aforesaid for the purpose of receiving the possession at the hands of the said marshal from said Garrett and others, when a contract for the sale and purchase of the tract mentioned in said bill of complaint was agreed upon and executed between this respondent & the said Garrett, this respondent stating distinctly to said Garrett at & before the execution of the contract that he, respondent, held only the equitable title to the land as aforesaid, and also furnishing to said complainant, through his son, Corydon Garrett, a precise statement in writing of the character of title or claim to said land as held by this respondent, which said written statement this respondent supposes is yet in the hands of said complainant or
476 his son, Corydon Garrett, and will abundantly show the utter falsehood of most of the charges in said bill of complaint.

This respondent denies that there was any agreement whatever between himself & complainant in *the* regard to the deduction proposed conditionally in the assignment to Rouse, but that the assignment was then made solely as a matter of favor on the part of this respondent, partly because respondent subsequently sold parts of the same tract at a lower price to others and partly to secure the punctual payment of the residue to Rouse. By the said endorsement the deduction or credit was to be dependent upon the residue being punctually paid by the obligors therein, according to the true tenor & effect of the said note, and if the said obligors should fail to pay said note punctually the said endorsement was to be void and of no effect.

This respondent, further answering, says that he is advised that complainant's bill and the matters therein contained & alleged furnish no good and sufficient ground of equity to authorize the intervention of the chancellor, as he is advised by counsel that the said complainant hath a sufficient & adequate remedy at law upon the covenant of warranty contained in the deed executed, signed, sealed & delivered to the said complainant by this respondent in the
477 event that the said complainant should at any time hereafter

be evicted by any superior adverse or paramount title. This respondent, in the event that complainant's injunction is perpetuated (which respondent cannot believe even probable), would pray that this his answer may be taken as a cross-bill, and that the chancellor may rescind the entire contract as made between this respondent & complainant, and decree the actual, quiet possession of the land mentioned in said bill of complaint to this respondent upon his (respondent's) refunding the amount actually received by him, so as to place the parties as nearly as possible in the same state as they were before any contract was made between them. This respondent would further pray that such other and general relief may be granted to him as to equity may belong, and that he be hence dismissed with his costs; and, as in duty bound, will ever pray, &c.

LEVI JONES.

1842, Sept. 18th.—Sworn to before me in due form of law.
Attest: A. M. ALLISON, *D. C.*

1843, Feb. 21st.—This answer lodged in my office.
Att.: WILL. D. ALLISON, *C'k.*

478 The separate answer of Jackson McClain to a bill of complaint exhibited against him and others in the Henderson circuit court by one John Garrett.

This respondent, saving, &c., for answer to so much of complainant's bill as he is advised is material for him to answer, answering, says that it is true, as alleged in complainant's bill, that he recovered a judgment at the June term, 1842, of the Henderson circuit court for the sum of $676.50, with interest & costs, against said John Garrett on a note which had been executed by said John Garrett & Corydon Garrett to this respondent's codefendant, Levi Jones, and by said Jones assigned to this respondent's codefendant, James Rouse, and by said Rouse assigned to this respondent. This respondent charges and avers that said John Garrett had a full, complete, and perfect knowledge of the nature of Levi Jones' title to the land before he purchased the same of said Levi Jones, for which said note was executed. This respondent here charges that said John Garrett was especially & particularly advised by said Levi Jones of the nature of his title, of his title to the 100 acres of land on the Green River Island, sold by Jones to said John Garrett, before he, John Garrett, purchased the same, and that he, the said Garrett, purchased the same with a full & entire knowledge
479 of Jones' title. This respondent here charges and avers that said John Garrett received a deed from said Levi Jones and Thomas Towles, Jr., for said 100 acres of land in his bill mentioned, which deed is of record in the Henderson county court, a copy of which, marked (D), is here filed as part hereof. This respondent here charges that said John Garrett, having accepted a deed for said land, has no good and sufficient ground to apply to the chancellor

for relief, and this respondent here denies the jurisdiction of this court in the premises.

This respondent here charges that said complainant, John Garrett, has a full & complete remedy at law upon the covenant of warranty contained in the deed executed by the said Levi Jones and Thomas Towles, Jr., to said complainant, John Garrett (which said deed was signed, sealed, and delivered to said John Garrett & accepted by him), should he at any future time be evicted by any paramount, superior or adverse title.

This respondent here charges that said Thomas Towles is a resident of this county & circuit, and is good & solvent, and as to the conditional credit endorsed on said note by said Levi Jones this respondent avers that said John Garrett wholly and entirely failed to comply with the condition contained in said endorsement,
480 and that he, this respondent, had a right to a judgment for the full amount of said note; and this respondent here avers that complainant had a full and complete remedy at law in case he had any right to a credit on said note growing out of the aforesaid conditional endorsement (which this respondent wholly denies), and therefore this respondent here denies the jurisdiction of the chancellor in the premises. This respondent, in case said contract should be rescinded, prays for a decree *over* against said James Rouse, his assignor, for the amount of his judgment against said John Garrett, with interest & cost of suit, &c., and this respondent prays that this answer may be made a cross-bill against said James Rouse for that purpose; and now, having fully answered, he prays that complainant's injunction be dissolved, & he, this respondent, be dismissed hence with equity & his costs, &c.

JACKSON McCLAIN.
POWELL, *Att'y.*"

1843, Feb. 21st.—This answer lodged in my office this day.
Att.: WILL. D. ALLISON, *Cl'k.*

The deed mentioned in the foregoing answer from Levi Jones to John Garrett reads as follows, to wit:

481 "This indenture, made this 26th day of October, in the year of our Lord one thousand eight hundred and forty-one between Levi Jones, of the Republic of Texas, of the one part, and John Garrett, of Henderson county, Kentucky, of the other part, witnesseth: That the said Levi Jones, for and in consideration of the sum of one thousand dollars, good and lawful money of the United States, to him in hand paid by the said John Garrett, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said John Garrett and to his heirs and assigns forever one hundred acres of land situate on Green River Island, in said county of Henderson & State of Kentucky, it being the same now in possession and occupancy of said John Garrett, and bounded as follows, to wit: Beginning on the bank

of the Ohio, at center or middle of the lane dividing the possession of said John Garrett & Abram Francenay, running thence along the middle of said lane to the bank of the bayou; thence down the bank or margin of the bayou to a point from whence a line drawn parallel with said lane to the Ohio river up said river to the beginning will include said hundred acres, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the above bargained and described premises, with the appurtenances, unto the said John Garrett, his heirs and assigns, forever; and the said Levi Jones and Thomas Towles, Junior, for themselves, their heirs, executors, and administrators, do covenant & agree to & with the said John Garrett, his heirs & assigns, to forever warrant and defend the above bargained and described premises, with the appurtenances, to the said John Garrett, his heirs & assigns, against themselves, each and both of them, and against John Slaughter, Smith Slaughter, Zephariah Noe & Mary Noe, his wife, and all other persons whomsoever claiming the said premises or any part thereof by, from, through, or under the said Levi Jones, John Slaughter, Smith Slaughter, Zephariah Noe & Mary Noe, his wife, or any or either of them, shall and will forever warrant and defend.

482

In witness whereof the said Levi Jones & Thomas Towles, Junior, have hereunto set their hands and seals the date above written.

LEVI JONES.
THOMAS TOWLES.

Witness:

his
JOHN x M. STINSON.
mark.
CORRYDON GARRETT.
JOHN McGARRET."

483 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones to John Garret was this day acknowledged before me, in my office, by the said Levi Jones and Thomas Towles, Jr., to be their act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 27th day of October, 1841.

WILL. D. ALLISON.

And now, to wit, on the day and year first aforesaid, to wit, at a circuit court held for Henderson county on the 27th day of March, 1843—

"Came the parties aforesaid, by their counsel, and the defendant McClain. Motion to dissolve the complainant's injunction being discussed and much argument being heard from the counsel of both parties, the premises being seen and by the court fully understood,

it is adjudged, ordered, and decreed that the complainant's injunction be dissolved; that the said defendant, Jackson McClain, may proceed to have the benefit of his judgment at law; that the complainant pay to said McClain the sum of sixty-eight dollars & 80 cts., being ten per centum damages on the amount enjoined & hereby dissolved, and also his costs about said motion ex-
484 pended, & that said McClain thereof have execution."

(Index omitted in printing. See general index.)

I, William D. Allison, clerk of the circuit court for Henderson county, in the State of Kentucky, do certify that the preceding 29 pages contain a full, true, and complete transcript of the record and proceedings of the cause herein mentioned.

In testimony whereof I have hereunto subscribed my name, at Henderson, the 4th day of April, 1843.

WILL. D. ALLISON.

Cl'k's fee for this transcript, $6.30.

Att.: WILL. D. ALLISON, *Cl'k.*

485 JOHN GARRETT, Complainant,
ag'st
JACKSON MCCLAIN, &c., Defendants.

By virtue of the authority vested in me as a judge of the court of appeals of the State of Kentucky, I hereby reinstate the injunction of the complainant, John Garrett, against Jackson McClain.

Given under my hand this 17th April, 1843.

DANIEL BRECK.

At a subsequent day of said March term, 1843, to wit, March 29th, the following order was entered:

"Continued."

At a subsequent June term of said court, to wit, June 24, 1843, the following order was entered:

"This day came the parties aforesaid, by their counsel, and thereupon the defendant, Jackson McClain, moved the court to require complainant to give additional and sufficient security in this injunction bond in this case; and, the premises being seen and by the court fully understood, it is ordered that the said complainant give additional security for his injunction by Thursday next, the 4th day of this term."

At a subsequent day of said June term, 1843, to wit, June 28th, the following order was entered:

486 "This day came the parties aforesaid, by their counsel, and thereupon the complainant, in obedience to the rule entered against him on the 1st day of the present term for additional security in his injunction bond, offered Corydon Garrett, John McGar-

rett, & Austin Phillips as additional securities, all of whom came into court, & having justified, as the manner is, are approved of by the court; and thereupon the said John Garrett, with the said Corydon Garrett, John McGarrett, and Austin Phillips, his sureties, in open court executed an additional injunction bond in this cause in the penalty of fifteen hundred dollars, conditioned according to law."

Said bond is now copied as follows:

Know all men by these presents that we, John Garrett, Corydon Garrett, John McGarrett, & Austin Phillips, are held and firmly bound unto Jackson McClain in the penalty of fifteen hundred dollars, for the payment of which, well and truly to be made to the said Jackson McClain, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, & administrators, jointly & severally, firmly by these presents. Signed with our hands,
487 sealed with our seals, and — this 28th day of June, 1843. The condition of the above obligation is such that whereas the said John Garrett heretofore obtained from the Henderson circuit court, upon bill filed, an injunction enjoining & restraining the said Jackson McClain, the sheriff of Henderson county, and all others from having any other or further proceedings on a judgment at law rendered in the Henderson circuit —, at the June term thereof, in the year 1842, in favor of said Jackson McClain against the said John Garrett, for the sum of six hundred & seventy-six dollars & 50 cts. debt, with interest thereon, at the rate of six per cent. per annum, from the 25th day of March, 1842, till paid, & his costs in that belief expended, & also to enjoin & restrain the sheriff & all others from having any further proceedings on an execution issued on said judgment until the matters of said bill can be heard in equity, & said John Garrett has been ruled by the court to give additional security for his said injunction, & offers the above bond, — Corydon Garrett, John Garrett, & Austin Phillips as his surety, who, being approved by the court, enter into this bond: Now, if the said John Garrett, in case his injunction is dissolved in the whole or in part, shall well & truly pay and satisfy the said judgment at law, with all interest and costs, to the said
488 Jackson McClain or his assigns, and shall well & truly pay all money & tobacco & costs due or to become due to the said Jackson McClain, and shall also pay all such costs and damages as may be adjudged to said McClain, and shall also pay all such costs and damages as may be adjudged to said McClain against him upon such dissolution of his injunction, then the above obligation to be void; else to remain in full force & virtue in law.

Executed in court.

J'N GARRETT. [SEAL.]
CORRYDON GARRETT. [SEAL.]
JOHN M. C. GARRETT. [SEAL.]
AUSTIN PHILLIPS. [SEAL.]

Attest: WILL. D. ALLISON, *Cl'k.*

On the same day of said term the following order was entered herein:

"This day came the complainant, by his counsel, & filed an amended bill herein."

The said amended bill is now copied as follows:

To the honorable judge of the Henderson circuit court, in chancery sitting:

Your orator, John Garrett, begs leave to amend his original bill filed in this honorable court against Jackson McClain & others, and as evidence that the land in controversy is not situated in the
489 State of Kentucky, but lies in the State of Indiana north & west of the River Ohio, as set out in his original bill, he also begs leave to file herewith the deed of cession from the State of Virginia to the United States, marked (Z) & made part hereof. He prays as in his original bill.

HART, *P. C.*

If said deed marked (Z) was ever filed it is not now with the papers.

At a subsequent day of said term, to wit, June 30, 1843, the following order was entered:

"This day came the defendants, Jackson McClain & Levi Jones, by their counsel, & filed their separate answers to the complainant's bills."

The said answers are copied herein on pages 30 & 35 of the transcript in this case.

At a subsequent November term, 1843, to wit, Nov. 8th, the following order was entered herein:

"This day came the defendant, James Rouse, & made oath to & filed his answer to the complainant's bill."

The said answer is here copied as follows:

490 The separate answer of James Rouse to a bill in chancery exhibited against him & others in the Henderson circuit court by John Garrett.

This respondent, saving, &c., for answer to so much of complainant's bills as he is advised is material for him to answer, answering, says that it is true that the respondent's codefendant, Jones, assigned to him the note on the complainants, Jno. Garrett & Corrydon Garrett, in complainant's bill mentioned, and that he assigned the same to his codefendant, Jackson McClain. This respondent now states that before the note was assigned to him he went to complainants, John Garrett & Corrydon Garrett, & asked them if the note was just & if they would pay the same, & they both told him that they would pay the note when it became due; and, indeed, they said they would pay the note as soon as they should go down the river & return, which they said they would do before the note was due. The complainant spoke of the land he had bought of Jones, for which said note was executed, and Garrett, the complainant, said he was acquainted well

with Jones' title & was satisfied with the title. This respondent states that he told said complainant if he would pay the note when it was due he would make a deduction of the amount of, he believes, fifty dollars, but nothing was to be deducted unless the debt was paid when it was due.

491 Now, having fully answered, he prays to be dismissed hence with equity, &c.

JAMES ROUSE,
By POWELL, *Att'y.*

At a subsequent day of said term, to wit, Nov. 8th, 1843, the following order was entered:

"Continued."

At a subsequent June term, to wit, June 7th, 1844, the following order was entered:

"Continued."

At a subsequent day of said term, to wit, June 8th, 1844, the following order was entered:

"This day came the parties aforesaid, by counsel, and on motion of complainant, by his counsel, leave is given him to execute another injunction bond in this cause, with Joseph Wheeler, Jr., his surety, in the penalty of fifteen hundred dollars, in lieu of his injunction bond bearing date the 28th day of June, 1843, on which Corrydon Garrett & John M. C. Garrett were sureties; and it is further ordered that when the injunction bond, with Joseph Wheeler, Jr., as surety, shall be duly executed in the clerk's office of this court as

492 aforesaid the said Corrydon Garrett and John M. C. Garrett shall be released as securities for said complainant in said injunction bond, and leave is give the complainant to take the depositions of said Corrydon Garrett and John M. C. Garrett at any time after they are released as aforesaid, to be read as evidence in this cause, and a dedimus is awarded the complainant for that purpose, directed to any justice of the peace in the State of Indiana.

On the same day of said term the following order was entered herein:

"This day came the parties, by their counsel, and, on motion of complainant's counsel, a dedimus is awarded him, directed to any justice of the peace of Posey county, State of Indiana, to take the depositions of Geo. Kimball & Jesse Kimball, to be read as evidence in this case."

The dedimus mentioned, if issued, is not now on file with papers.

At a subsequent November term, 1844, of said court, to wit, November 27th, 1844, the following order was entered:

"This day came the defendant, James Rouse, &, having leave, filed an amended answer herein, which is a cross-bill against Levi Jones."

493 "The defendant, James Rouse, by leave of the court first obtained, amended his original answer filed herein, and by way of amendment refers to and adopts the answer and cross-bill of his codefendant, Levi Jones, as part of this his amended answer, and he makes his amendment a cross-bill against the complainant Garrett and prays that in case the injunction is perpetuated that the contract between the said Jones and the complainant be rescinded, and that the respondent have a lien on the land for which the original note was given to the amount of the said note, and that he may have a decree over against his codefendant Jones, who assigned him the said note, for the amount of the said note & interest. He prays that the said land, or so much thereof as may be necessary to satisfy the said note & interest, may be subjected to the payment thereof, & in order to enforce his said lien he prays that in the event of a recession of the contract and perpetuation of the injunction that the said Garrett may be decreed to surrender the possession of the said land to this respondent upon this respondent's paying him up his purchase-money heretofore paid to Jones. He prays for all such other & further equitable relief as the [to] equity belongs and his case may require. He makes this amended answer a cross-bill against
494 his codefendant, Jones, who is not an inhabitant of the United States, and he prays for appropriate process against him so as to bring him before the court; and, as in duty bound, he will ever pray.

JAS. ROUSE."

On the same day of said term the following order was entered:

"This day this cause came on to be heard upon the bill, amended bills, answers, exhibits, & depositions in the cause; and the court, being now sufficiently advised of and concerning the premises, doth adjudge, order, and decree that the complainant's bill & amended bills be dismissed without prejudice, and that his injunction be dissolved, & that the said defendant, McClain, may proceed to have the benefit of his judgment at law. It is further ordered and decreed that the complainant pay to the defendant McClain the sum of sixty-eight dollars and 80 cents, being 10 per centum damages on the amount of the judgment enjoined and hereby dissolved, and also his costs by him in this suit expended, & that said McClain have execution for said damages & costs. It is further decreed & ordered that complainant pay to said defendants, Rouse & Jones, each his costs in this suit expended, & that said Jones & Rouse have separate executions for the same. During the trial of this cause the
495 complainant tendered a bill of exceptions, which, being signed and sealed by the court, is ordered to be filed & made part of the record."

The bill of exceptions mentioned in the above order is now copied, as follows:

"Be it remembered that on the calling of this cause the complainant's counsel asked leave of the court to file the amended bill, which is herewith filed as part hereof, marked No. 1, & made part

hereof. The court refused the leave, and the case was tried *and the case was tried* & the decree rendered at this term of this court; to which opinion of the court in refusing to let said amended bill be filed the complainant excepts, & prays this his bill of exceptions to be signed, sealed, and made a part of the record.

"JOHN CALHOON."

The amended bill mentioned in the bill of exceptions as numbered (1) is now copied, as follows:

"The complainant John Garrett begs leave to amend his original bill filed in this case, and states to your honor that at the time the said Levi Jones sold to your orator the one hundred acres of land mentioned in his original bill he executed the deed
496 therefor as stated in his original bill, which is signed & sealed and duly executed also by Thomas Towles, Jun., who, your respondent has been informed, is a necessary party to the suit, & he here now prays said Thomas Towles, Jun., may be made a defendant to this and his original bill, with apt words to charge him, &c.

Said Jones also alleges that said land was & is a part of six hundred acres patented to John Slaughter, which this complainant alleges and avers is the fact; that in the covenant of warranty contained in the deed from the said Levi Jones & Thomas Towles, Jun., to your orator they warrant & defend the above bargain- & described premises, with the appurtenances, to said John Garrett, his heirs & assigns, against themselves, each and both of them, and against John Slaughter, Smith Slaughter, Zephariah Noe & Mary Noe, his wife, and all other persons whomsoever claiming the said premises or any part thereof, by, from, through, or under the said Levi Jones, John Slaughter, Smith Slaughter, Zephariah Noe, or Mary Noe, his wife, or either of them, all which will more fully appear by reference to a copy of said deed, made part hereof. Your orator also states that said Levi Jones, as he has been in-
497 formed & charges the fact to be, claimed an equitable title to said land by a bond which was executed by John Slaughter, the patentee, now deceased, to Leonard Jones, and which bond was by said Leonard Jones assigned to said Levi Jones. Whether the consideration of said bond was paid by said Leonard or has ever been paid by any other person to said John Slaughter or to any other person for him he does not know. He prays, therefore, that said Leonard Jones may be made a defendant to this and his original bill, together with said John Slaughter, Smith Slaughter, Zephariah Noe & Mary, his wife, which said John, Smith, Zephariah, & Mary, your orator has been informed and avers, are the children and heirs-at-law of said John Slaughter, the patentee. He prays that said Leonard Jones & Levi Jones may interplead with the said children, heirs, & representatives of said John Slaughter, the patentee, and that said Leonard & Levi may be compelled to state if they or either of them have paid the whole of the said consideration, & that they may file their bond, & that said heirs & representatives of said John Slaughter may say if the whole of said consideration has been re-

ceived, & if the whole has not been received how much has been & how much is yet due & unpaid, & if any part of the said consideration is unpaid that said Levi Jones may pay the same, or upon his failure to do so that your orator may pay the same out of the
498 money due said Jones & enjoined in this case, & that said John Slaughter's heirs & representatives may, by a decree of this honorable court, be compelled to convey to your orator the said one hundred acres of land, and that your orator's title to the same may be quieted and rendered secure. He prays as in his original bill and for such other & further relief as to equity belongs & his case may require; and, as in duty bound, he will ever pray, &c.

TRIPLETT, &c., *For Compl't.*

(Index omitted in printing. See general index.)

499 STATE OF KENTUCKY, } ss:
County of Henderson, }

I, S. A. Young, clerk of the Henderson circuit court, a court of record in and for said State and county, do hereby certify that the above and foregoing is a full, true, and complete copy of all the original pleadings, proceedings, entries, papers, and records in a certain cause wherein John Garrett was complainant and Jackson McClain, Levi Jones, and James Rouse were respondents, as the
500 same appears now on file in my office and in the records of the said Henderson circuit court.

Witness my hand and the seal of said court this 29th day of September, A. D. 1888.

S. A. YOUNG,
Clerk of the Henderson Circuit Court.

STATE OF KENTUCKY, } ss:
County of ——, }

I, M. C. Givens, judge of the Henderson circuit court, a court of record in and for the county of Henderson, in the State of Kentucky, hereby certify that S. A. Young, whose genuine signature appears to the foregoing attestation, is clerk of the Henderson circuit court, duly commissioned and qualified; that all his official acts are entitled to full faith and credit, and that the said attestation is in due form of law and by the proper officer.

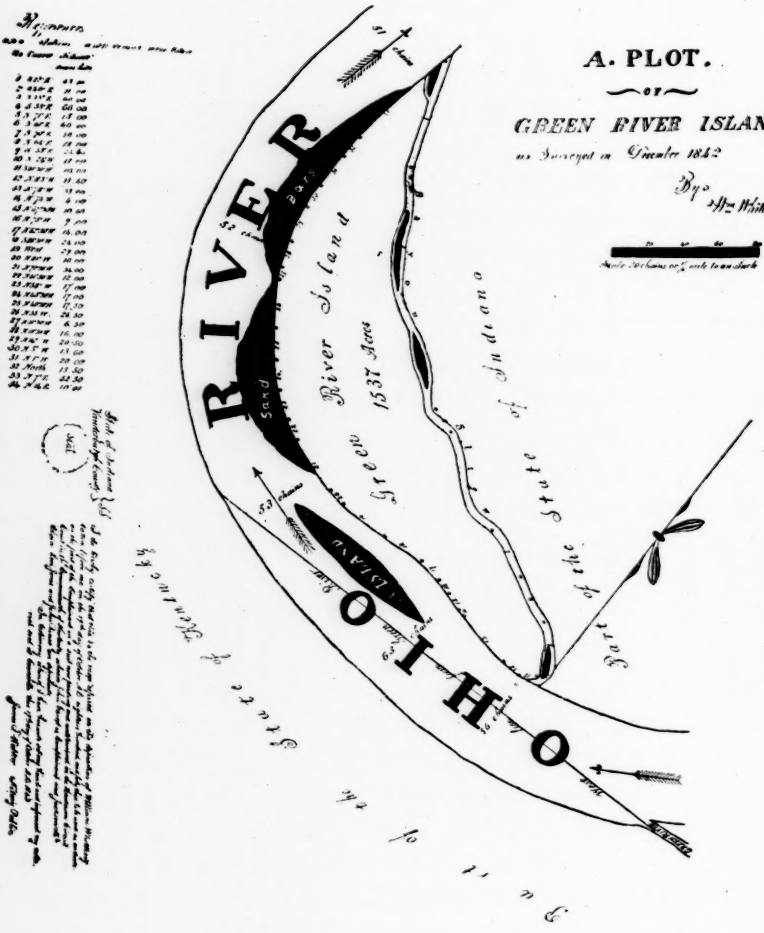
Witness my hand and seal this 24th day of September, A. D. 1888.

M. C. GIVENS,
Judge of the Henderson Circuit Court.

501 STATE OF KENTUCKY, } ss:
County of Henderson, }

I, S. A. Young, clerk of the Henderson circuit court, a court of record in and for the county and State aforesaid, hereby certify that M. C. Givens, whose genuine signature appears to the foregoing certificate, is the judge of the Henderson circuit court, duly com-

Exhibit Q.


A. PLOT.
OF
GREEN RIVER ISLAND
as Surveyed in December 1842
By Wm Whittlesey
RIVER
OHIO
Green River Island
1537 Acres
Sand Bars
ISLAND
Part of the State of Indiana
Part of the State of Kentucky
Scale 50 chains or ½ mile to an Inch

missioned and qualified; that all his official acts are entitled to full faith and credit, and that said certificate is in due form of law and by the proper officer.

Witness my hand and the seal of said court this 27th day of September, A. D. 1888.

S. A. YOUNG,
Clerk of Henderson Circuit Court.

502 COMMONWEALTH OF KENTUCKY:

In the Henderson Circuit Court.

JOHN GARRETT
vs.
JACKSON MCCLAIN, LEVI JONES, & JAMES ROUSE.

STATE OF INDIANA, *Vanderburg County:*

EVANSVILLE, *October* 19*th*, 1843.

The depositions of William Whittlesey, George Linxwyler, Lewis James, Isaac Knight, Clark McCallister, Absalom Vann, William Wagnon, Matthias Whetstone, Jesse Lane, Jonathan W. Cockran, John Parker, John Q. Lane, Corrydon Garrett & John M. C. Garrett, resident citizens of the State of Indiana, taken in pursuance of the annexed commission issuing out of the office of the clerk *of the clerk* of the Henderson circuit court, in the Commonwealth of Kentucky, & to me issued and directed for the examination of the said Corrydon Garrett, John M. C. Garrett, John Q. Lane, William Whittlesey, Jonathan Cochran, William Wagnon, Isaac Knight, George Linxwyler, Absalom Vann, Matthias Whetstone, Daniel James, Lewis James, James Lynn, Clark McCallister, Jesse Lane, & John Parker, as witnesses on the part of the complainant in the above-entitled cause, now depending & undetermined in said
503 court, and also in pursuance of the notice annexed & herewith returned.

WILLIAM WHITTLESEY, being produced & sworn, deposes & says:

Question by complainant. What is your age, occupation, & place of residence?

Answer. I am forty years of age; reside in Vanderburgh county, Indiana, & follow surveying more than any other business.

Question 2nd. Do you know anything of the situation of a tract of land above Evansville, known as Green River Island? And, if so, state.

Answer. Yes; I know were it is. In December, 1842, at the request of Mr. John Garrett, I surveyed the tract of land called Green River Island, and the plat which I here present is a correct plat of said survey, which plat I here make a part of my answer to the foregoing question.

(Here follows diagram marked Exhibit 2.)

Mr. Powell, the defendant's counsel, here objected to making said plat a part of Mr. Whittlesey's deposition.

Question 3. State, if you know, on which side of the Ohio river the tract of land known as Green River Island is situated.

Answer. The Ohio river runs between the tract of land
504 known as Green River Island & the State of Kentucky. When I surveyed it there was no water running through the channel marked on the map that I have made a part of my answer to one of the foregoing questions, as a bayou *slew*.

Question 4 by complainant. State, if you know, at what stage of water the Ohio river was when you surveyed it.

Answer. I should think about eight feet above low-water mark.

Question 5th by complainant. How long have you known the tract of land called Green River Island?

Answer. About eight years.

Question 6th by complainant. Has water ever run through the bayou *slew* at low-water mark since you have known it? Also state if you — how wide the bayou *slew* is.

Answer. Water has never run through the bayou *slew* at low water since I have known it. The bayou *slew* is on the average from three to five chains wide; in many places it is grown up with cotton-wood trees of a small size.

Question 7th by complainant. State, if you know, how wide the Ohio river is opposite to the Green River Island & between it and the main-land in Kentucky.

Answer. From fifty to sixty-five chains.

505 Question 8th by complainant. State, if you know, whether the tract of land known as Green River Island is north or south of the mouth of Green river.

Answer. A due west line from the mouth of Green river will not touch the island. The whole of it is to the north of Green river.

Question 9th by complainant. Are you or are you not a practical surveyor?

Answer. I am; I have followed it for the last twenty-five years.

WM. WHITTLESEY.

GEORGE LINXWYLER, being produced and sworn, deposes & says:

—. How old are you, what is your occupation, and where do you reside?

Answer. I am in my seventy-sixth year; follow farming for a livelihood, and reside in Vanderburgh county, Indiana.

Question by complainant. How long have you known the tract of country known as Green River Island? & state all you know of its location, its contiguity to the main land on the Indiana side of the Ohio river, and what you know of the bayou *slew* between
506 said tract and the main land on Indiana side.

Answer. In the year eighteen hundred and six I lived on what is called Green River Island. That was the first year that I knew it. So far back as I have known the island the bayou *slew* dividing it from the main-land on the Indiana side was dry in low

water. A person could as early as 1806 cross over it on dry land almost the whole length of the bayou, except that there was here & there a hole where there was a little pond of standing water. The main channel of the Ohio river at all stages of water run between said island and the main-land in Kentucky, and at low water the whole of the water of the Ohio river run between the island and the main-land in the State of Kentucky. The map made by Mr. Whittlesey a part of his deposition I *thing* is a fair profile of the Ohio river, Green River Island, & the bayou *slew*.

Ques. by defendant's *council*. State whether or not the Green River Island has not always been considered as part of the State of Kentucky, and whether or not the people resident on the island have not at all times been subject to the laws of the State of Kentucky, & whether or not boats have not passed through the bayou or *shute* dividing the island from the main-land of Indiana.

Answer. I *alway* understood that the Green River Island
507 was part of the State of Kentucky, and the people living on the said Green River Island were always subject to the laws of Kentucky & paid taxes to the said State of Kentucky. I have known flat-boats, barges, & other boats to pass through the bayou or *shute* while the water was high; indeed, all kinds of boats that run the Ohio river at the time I knew said island could pass through said bayou.

And further this deponent saith not.

his
GEORGE x LINXWYLER.
mark.

LEWIS JAMES, being first duly sworn, deposes and says:

Question by complainant. How old are you, what is your occupation, and where do you reside?

Answer. I am sixty years old; am a farmer by occupation, and reside in the State of Indiana.

Question by same. State how long you have known the tract of country known as Green River Island, and state all you know of its contiguity to the main-land in Indiana, the situation of the bayou *slew* & the Ohio river, & upon which side of said supposed island the Ohio river runs, & state generally all you know about it.

508 Answer. I have known the tract of land known as Green River Island ever since the year seventeen hundred and ninety-six, and I think a few years earlier in high water *water* flat-boats & keel-boats could pass through the bayou *slew*, but ever since I have known it it has *went* dry in low water. From 1796 to this time the bayou *slew* has been dry at low water in the Ohio river. At low water there has none of the water of the Ohio run through the bayou *slew* since I have known it. At ordinary low water all of the water of the Ohio river run between said island & the main-land on the Kentucky side of the Ohio. The bayou *slew* between the island and the main-land on the Indiana side could be crossed on dry land the whole length of it, except that here & there there was

an occasional pool of standing water. I always understood that the island was claimed by Kentucky. The people living on it voted & paid taxes in Kentucky. I have seen the map that is made a part of Mr. Wittlesey's deposition, and think it correct.

LEWIS JAMES.

ISAAC KNIGHT, being duly sworn, deposes & says:

Question by complainant. State your age, occupation, & place of residence.

509 Answer. I am in my sixty-fourth year of my age; am a farmer by occupation, & reside in Vanderburgh county, Indiana.

Question by same. State all you know of the location, situation, & description of the tract of country known as Green River Island. State the situation of the bayou *slew* & the Ohio river, so far as their connection & contiguity with the said island is concerned.

Answer. I have known the Green River Island for fifty-two years. I knew it before anybody ever lived upon it. I know that when I first visited the island, fifty-two years ago this fall, that the bayou *slew* was dry. In 1810 & in 1816 I well recollect that at low water in those years there was none of the waters of the Ohio that passed through the bayou *slew*. All of the water passed at low water in those years between the island and the main-land in Kentucky. I have known it since then, & know that at ordinary low-water mark none of the waters of the Ohio passed through the bayou. I have heard that boats passed through the sloo at high water.

ISAAC KNIGHT.

510 CLARK MCCALLISTER, being duly sworn, deposes & says:

Question by complainant. State your age, occupation, & place of residence.

Answer. I am about fifty-four years of age; am a farmer by occupation, and reside in Vanderburgh county, Indiana.

Question by complainant. State all you know concerning the tract of country known as Green River Island, its location, the contiguity of the same to the main-land in Indiana and Kentucky, and all you know about it and the jurisdiction exercised over it.

Answer. I know the land in question and have known it for the last forty years. I lived at the head of it, and in high water I have seen flat-boats go down the bayou sloo & keel-boats pass up through it in high water. In low water the bayou went dry and was dry the whole length of it, except here & there a little pool, ever since I have known it at low water in each year; all the water of the Ohio river passed between said island and the main-land in Kentucky. I have always understood that the island belonged to Kentucky. I know the people living on it paid taxes in Kentucky and voted in Kentucky. I have examined the map made part of Mr. Whittlesey's deposition and think it correct; so far as I know, Indiana

511 never exercised jurisdiction over said island. When I first knew the island the bayou was near two hundred yards

wide; the bed in low water was a dry bed of sand and clear of bushes.

CLARK McCALLISTER.

ABSALOM VANN, being duly sworn, deposes & says:

Question by complainant. How old are you, what is your occupation, & where do you reside?

Answer. I will be fifty-nine years old in Feb'y next; I am a farmer, and reside in Vanderburgh county, Indiana.

—. State, if you know, the situation of the Green River Island and how long you have known it and all you know about the bayou sloo on the Indiana side of it and the Ohio river on the other side of it, and also state, if you know, what State has hitherto exercised jurisdiction over it.

Answer. I have known the tract of land known as Green River Island for forty years. In the year eighteen hundred and three, in the fall, I know that the bayou sloo was dry, the whole length of it, except that there was here & there a pool of standing water. In that year the whole of the water of the Ohio river at low water
512 run between said island and the main-land in Kentucky. I lived on the island nine years during that time. I mustered in Kentucky and paid taxes there. Kentucky exercised jurisdiction over it. Every year that I have known the island the bayou at ordinary low water was dry land; the bed of the bayou where I first knew it was between one & two hundred yards wide and tolerably clear of bushes; there was here and there a small bunch of willows. The bed is now considerably filled up, and is dry when the water is below a middling stage. In high stages of water I have known flat-boats to pass down the bayou. I have seen keel-boats pass up through said bayou in high water. I have known the island to be all under water, and also the land adjoining it on the Indiana side, when the Ohio river was very high; at such times flat-boats could pass over cultivated fields on the island and on the main-land in Indiana adjoining it. I have examined the map that is made a part of Mr. Whittlesey's deposition, and think it truly represents said island, the Ohio river, and the bayou *slew*. As far as I know, Indiana never exercised or claimed jurisdiction over said island.

his
ABSALOM x VANN.
mark.

513 WILLIAM WAGNON, being duly sworn, deposes & says:

Question by complainant. State your age, your place of residence, & occupation.

Answer. I am over sixty-six years of age, am a farmer by occupation, & live in the State of Indiana.

Question by complainant. Are you acquainted with the tract of land known as Green River Island? And, if so, state how long you have known it, its situation, and what State exercises & has exercised jurisdiction over it.

Answer. I first became acquainted with the location of Green River Island in the fall of eighteen hundred & seven. During that fall I passed up in the bed of the bayou sloo running between said island & the main-land in Indiana. The bayou was then dry, except that there was here & there a small pool; there was not then any of the waters of the Ohio running through said bayou at a middle stage of water—that is to say, when the water was flush in the river but not over the banks. In the winter of 1808 or '9 I passed through said bayou in an empty canoe. In high water the water of the Ohio has generally run round through the bayou, but at low water every year that I have seen it since I have known it the bed has been as dry as any part of the main-land, except the pools above referred to. My opinion is that the bayou would
514 average about one hundred & forty yards wide when I first knew it. I have understood that Kentucky always exercised jurisdiction over it. I have examined the map that is made part of Mr. Whittlesey's deposition and think it correct.

WM. WAGNON.

MATTHIAS WHETSTONE, being duly sworn, deposes & says:

Question by complainant's counsel. What is your age and where do you reside?

Answer. I am sixty-four years of age, and reside in Indiana, where I have resided for thirty-three years.

Question by complainant's counsel. State, if you know, the location, situation, & all the particulars respecting Green River Island. State how long you have known said island, and state all you know respecting the bayou sloo running between said island and the main-land on the Indiana side, and what State has exercised jurisdiction over said island.

Answer. I have known Green River Island for thirty-three years; in low water the bayou running between said island and the main-land in Indiana has every year been dry since I have known
515 it. When the water is low in the Ohio all of the water of the river runs between said island and the main-land on the Kentucky side. So far as I know or believe, Kentucky has always exercised jurisdiction over said island. I have never known or heard that Indiana claimed or exercised jurisdiction over said island. I have examined the map that is made a part of Mr. Whittlesey's deposition, and believe it to be accurate and correct. Every year since I have known said island at high stages of water the water runs through the bayou sloo.

his
MATTHIAS x WHETSTONE.
mark.

JESSE LANE, being duly sworn, deposes & says:

Question by complainant's counsel. How old are you, what is your occupation, & where do you reside?

Answer. I am over forty-four years of age and a farmer, and reside in Vanderburgh county, Indiana.

Question by same. State how long you have known Green River Island, the bayou sloo between it and the main-land in Indiana, and give, if you can, a general description of said island, the bayou sloo, & the Ohio river adjoining the same, & what State has exercised jurisdiction over it.

516 Answer. I have known Green River Island since 1817. I resided about fifteen years upon it and know every part of it. I have examined the map made a part of the deposition of Mr. Whittlesey and believe it accurate & correct. The channel on the map marked bayou *slew* has been dry every year, since I have known it, when the water was low in the Ohio river. Every year for the last twenty-five or six years at low water all of the water of the Ohio river has run between said island and the main-land on the Kentucky side, and at such stages none of it has passed through said bayou *slew*. The bayou *slew* is now filled up and grown up with timber, so that it is impassable for crafts, and is dry the principal part of the year. The water must now be considerably above a medium stage before the bottom of said bayou *slew* is covered by water. The State of Kentucky has exercised jurisdiction over said island ever since I have known it. When I lived upon it I paid taxes there. I never knew or heard that Indiana ever exercised jurisdiction over said island. The water has, a part of every year since I have known it, run through said bayou. When I first knew said bayou there was but few bushes on it, and at high water I have seen steamboats pass up said bayou & flat-boats down it. The principal part of the bottom was a bed of sand. I do not think that a steamboat has passed it for the last twenty years. The main
517 land was not flooded when I saw steamboats pass through it.

JESSE LANE.

JONATHAN W. COCHRAN, being sworn, says that he is twenty-three years old, and lives in Indiana. He is acquainted with Green River Island and has been for the last twelve years, and has lived either on it or close to it ever since. The bayou for the last twelve years has been dry the principal part of the year. It is and has been for twelve years last past dry, unless the water in the Ohio river was above a medium stage. The bed of the bayou is now grown up with timber and is not navigable any portion of the year, nor has it ever been navigable since I have known it. Kentucky has exercised jurisdiction over it ever since I have known it. I am not aware that Indiana has ever exercised or claimed jurisdiction over it. The water from the Ohio has run through it a part of every year since I have known it.

Question by complainant's counsel. Have you ever heard Dr. Levi Jones say by what title he claimed any part of Green River Island?

Answer. I heard Dr. Levi Jones say that he claimed title to a part of Green River Island from one Slaughter, and that his title
518 was a good one. He said that if his title was not good he

would not have got the land. Knows nothing of the trade made with complainant.

J. W. COCHRAN.

JOHN PARKER, being sworn, says that he is forty-two years of age and resides in the State of Indiana; has known Green River Island for the last twenty-eight years or thereabout, and that at a low stage of water the bayou *slew* went dry at low water. All of the water of the Ohio runs between said island and the main-land in Kenutcky, and none of it run through the bayou *slew*; has seen one steamboat pass through it at high water. The bed of the bayou is now filled up and grown up with timber and has not been navigable for the last fifteen years. None of the water of the Ohio river has for several years last past run through said bayou, unless the water in the Ohio was above medium stage. At some part of every year water has run through said bayou from the Ohio. I have examined the map made a part of Mr. Whittlesey's deposition and believe it to be correct. Kentucky has exercised jurisdiction of said island. I never knew or heard that Indiana claimed or exercised jurisdiction over said island.

his
JOHN x PARKER.
mark.

519 STATE OF INDIANA, *Vanderburgh County:*

I, James T. Walker, a notary public in and for the county of Vanderburgh and State of Indiana, and duly commissioned and sworn, do certify that the foregoing depositions of William Whittlesey, George Linxwyler, Lewis James, Isaac Knight, Clark McCallister, Absalum Vann, William Wagnon, Matthias Whetstone, Jesse Lane, Jonathan W. Cochran, John Parker, John Q. Lane, Corrydon Garrett, & John M. C. Garrett were taken, subscribed, and sworn to before me on the nineteenth day of October, in the year of our Lord one thousand and eight hundred and forty-three, at the office of Wilks Reagin, Esq., in the town of Evansville, Vanderburgh county, in the State of Indiana, between the hours of eight o'clock a. m. and six o'clock p. m. of said day, the complainant and his attorney being present, and Lazarus W. Powell, attorney for the defendant, being also present. By agreement of the counsel on both sides and at my request the principal part of said depositions were reduced to writing by the counsel for the respective parties. The balance were written by myself. Said depositions were taken in pursuance of the annexed commission, to be read in evidence on the trial of a certain suit in chancery now depending and undetermined in the
520 Henderson circuit court, in the Commonwealth of Kentucky, wherein John Garrett is complainant and Jackson McClain, Levi Jones, & James Rouse are defendants on the part of the complainant.

In testimony whereof I have hereunto subscribed my name and impressed my notarial seal, at Evansville, this
[SEAL.] 19th day of October, A. D. eighteen hundred & forty-three.

JAMES T. WALKER,
Notary Public.

The following is the commission attached to the foregoing depositions:

The Commonwealth of Kentucky to James T. Walker, notary public for Vanderburgh county, in the State of Indiana, Greeting:

Know ye that, reposing special confidence in your ability and circumspection in diligently examining Corrydon Garrett, John M. C. Garrett, John Q. Lane, William Whittlesey, Jonathan Cochran, William Wagnon, Isaac Knight, George Linxwyler, Absalom Vann, Matthias Whetstone, Daniel James, Lewis James, James Lynn, Clark McCallister, Jesse Lane, and John Parker, as witnesses for John Garrett in a certain suit in chancery depending and undetermined in the circuit court of Henderson county, in the said State of Kentucky, wherein the said John Garrett is complainant and
521 Jackson McClain, Levi Jones, and James Rouse are defendants:

You are therefore hereby authorized, empowered, and requested to cause to come before you the witnesses aforesaid at such certain time and place as the said complainant shall appoint, and then diligently examine on oath touching the premises, and their depositions, when duly taken, into our said court, plainly and distinctly, without delay you will send, certified under your hand and seal, returning to us also this commission all closely sealed up.

Witness William D. Allison, clerk of our said court, at the courthouse, in the town of Henderson, this 9th day of October, 1843, and in the 52nd year of our said Commonwealth.

WILL. D. ALLISON.

The following is the notice attached to said depositions:

In the Henderson Circuit Court.

JOHN GARRETT
vs.
JACKSON MCCLAIN, LEVI JONES, & JAMES ROUSE.

John Garrett hereby notifies Jackson McClain, Levi Jones, and James Rouse that on the 19th day of October, A. D. 1843, between the hours of eight o'clock a. m. and six o'clock p. m., at the office of Wilks Reagin, Esq., in the town of Evansville, Vanderburgh county, Indiana, he will proceed to take the depositions of
522 Corrydon Garrett, John M. C. Garrett, John Q. Lane, William Whittlesey, Jonathan Cochran, William Wagnon, Isaac Knight, George Linxwyler, Absalom Vann, Matthias Whetstone,

Daniel James, Lewis James, James Lynn, Clark McCallister, Jesse Lane, & John Parker, to be read in evidence on the trial of a certain suit in chancery now depending and undetermined in the Henderson circuit court, wherein I am complainant and you are defendants. Should I not finish taking said depositions on the said 19th day of October aforesaid, I will continue taking them from day to day at the same place and between the same hours of each succeeding day until all are taken (Sunday excepted).

Respectfully, JOHN GARRETT,
By J. LOCKHART, *His Sol.*

The notice is thus endorsed:

STATE OF KENTUCKY, *Henderson County:*

James Lockhart, being duly sworn, deposes and says that he delivered a copy of the within notice to Jackson McClain, one of the defendants therein named, on the 9th or 10th day of October, 1843.

JAS. LOCKHART.

Subscribed and sworn to before me Nov. 21, 1844.
Test: A. M. ALLISON, *D. C'k.*

523 STATE OF KENTUCKY, *County of Henderson:*

I, S. A. Young, clerk of the Henderson circuit court, a court of record in and for said State and county, do hereby certify that the above and foregoing are full, true, and complete copies of the original depositions of William Whittlesey, Jonathan Cochran, William Wagnon, Isaac Knight, George Linxwyler, Absalom Vann, Matthias Whetstone, Lewis James, Clark McCallister, Jesse Lane, and John Parker, now on file in my office and taken and published in a certain cause wherein John Garrett was complainant and Jackson McClain, Levi Jones, and James Rouse were respondents; that said depositions are now filed and among the papers in said cause in my office; and I further certify that the accompanying map or plat is a full, true, and correct copy of the original map or plat annexed to the deposition of the witness, William Whittlesey, as the same now appears on file in my office among the records and papers in said cause.

Witness my hand and the seal of said court this 29th day of September, A. D. 1888.

S. A. YOUNG,
Clerk of Henderson Circuit Court.

524 STATE OF KENTUCKY, *County of* ——:

I, M. C. Givens, judge of the Henderson circuit court, a court of record in and for the county of Henderson, in the State of Kentucky, hereby certify that S. A. Young, whose genuine signature appears to the foregoing attestation, is clerk of the Henderson circuit court, duly commissioned and qualified; that all his official

acts are entitled to full faith and credit, and that said attestation is in due form of law and by the proper officer.

Witness my hand and seal this 26th day of September, A. D. 1888.

M. C. GIVENS,
Judge of Henderson Circuit Court.

STATE OF KENTUCKY, *County of Henderson:*

I, S. A. Young, clerk of the Henderson circuit court, a court of record in and for the county and State aforesaid, hereby certify that M. C. Givens, whose genuine signature appears to the foregoing certificate, is the judge of the Henderson circuit court, duly commissioned and qualified; that all his official acts are entitled to
525 full faith and credit as such, and that said certificate is in due form of law and by the proper officer.

Witness my hand and the seal of said court this 27 day of September, A. D. 1888.

S. A. YOUNG,
Clerk of Henderson Circuit Court.

526 STATE OF INDIANA, *Vanderburgh County:*

I, Harold Taylor, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, hereby certify that the above-named Ira Fairchild, Anthony Hawkins, Sebastian Henrich, Commodore Kelley, James D. Parvin, William Reavis, James D. Saunders, Louis Sihler, witnesses, were first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said depositions were reduced to writing by me; that the respondent was present by its attorney, R. H. Cunningham, Esq., and that said depositions were taken at the office of the clerk of the United States circuit court, in the city of Evansville, county of Vanderburgh and State of Indiana, on the 26th, 27th, and 28th days of September, 1888, between the hours of eight o'clock a. m. and eleven o'clock p. m. of said days, and that the several exhibits herein appearing were by me duly attached hereto.

Seal Harold Taylor, Notary Public, Indiana.

In testimony whereof I have hereunto set my hand and notarial seal this the 3rd day of November, A. D. 1888.

HAROLD TAYLOR,
Notary Public.

527 (Endorsed:) Supreme Court of the United States. October term, 1888. No. 2, original. The State of Indiana, complainant, *vs.* The State of Kentucky. Evidence for complainant in rebuttal. Filed February 6, 1889.

And on the same day, to wit, on the 6th day of February, A. D. 1889, the evidence for the defendant was filed in the words and figures following, viz:

528 *Stenographer's Transcript.*

In the Supreme Court of the United States.

THE STATE OF INDIANA, Complainant,
vs.
THE STATE OF KENTUCKY, Respondent. } No. —.

Respondent's depositions taken at Evansville, Indiana, and Henderson, Kentucky, September 11th, 12th, 13th, and 14th and 28th, 1888.

Appearances: For plaintiff, McDonald, Butler & Snow; Daniel B. Kumler; for defendant, P. W. Hardin, J. Proctor Knott, R. H. Cunningham.

529–532 (Stenographer's index omitted in printing. See general index.)

533 In the Supreme Court of the United States.

THE STATE OF INDIANA, Complainant,
against
THE STATE OF KENTUCKY, Respondent. } In Equity.

Stipulation.

It is stipulated that the taking of depositions of witnesses to be read as evidence in the trial of the above-entitled cause shall be resumed in the office of the clerk of the circuit court of the United States for the district of Indiana, in the city of Evansville, at 10 o'clock in the forenoon of Monday, September tenth, 1888, and continue from day to day at that or such other place as the attorneys for said parties present may agree upon until completed; that the complainant's witnesses-in-chief which have not yet been examined shall be first examined, and all depositions taken under the stipulations as to exceptions to competency, relevancy, etc., heretofore entered into.

Witness our hands this 23rd day of August, 1888.

McDONALD, BUTLER & SNOW, *For Compl't.*
P. W. HARDIN & J. PROCTOR KNOTT,
For Respond't.

534 Depositions of Franklin Sours, William Wells, Samuel Butler, Lemuel Stansbury, William L. Stansbury, Dr. G. W. Yates, and Parvin De Garis, witnesses, produced and sworn to before me, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, at Evansville, in the county of Vanderburgh, State of Indiana, at the office of the clerk of the United States circuit court, in said city of Evansville, county of Vanderburgh and State of Indiana, on the 11th and 12th days of September, A. D. 1888, pursuant to the annexed notice and stipulations.

These depositions were taken on the part of the respondent in a certain action now pending in the Supreme Court of the United States wherein The State of Indiana is complainant and The State of Kentucky is respondent.

535 FRANKLIN SOURS, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by Hon. J. PROCTOR KNOTT:

1 Q. What is your name?

A. Franklin Sours.

2 Q. What is your age, where do you reside, and what is your occupation?

A. I am 43; reside in Evansville, Indiana; occupation, civil engineer and surveyor.

3 Q. Do you occupy any public office; if so, what, and how long have you held that office?

A. I occupied the position of county surveyor—the exact time I cannot state—about a year and six or seven months; something like that.

4 Q. County surveyor of Vanderburgh county?

A. Of Vanderburgh county, Indiana.

5 Q. Please examine the tracing map I now hand you and state what it is.

A. That is a copy of a map that is on file in the office of the county surveyor—a tracing of it. The map is on file there. It is a map of Vanderburgh county. This tracing is not of the whole map, but of the southern part of Knight township, of Vanderburgh county, Indiana, and it was compiled in 1857 and filed in the county
536 surveyor's office of the county. The scale is two inches to the mile, and it is a correct copy of the map.

6 Q. By whom and when was that map made from which that tracing is made?

A. I have a copy here of the title as found on the map. (Reading): "Map of Vanderburgh county, Indiana, compiled and drawn from the best sources and authorities, and published by Jacob Luchenheimer, real estate agent, Evansville, Indiana, 1857." There is a reference where it was compiled and entered according to act of

Congress in the year 1857 by Jacob Luchenheimer, in the clerk's office of the district court, southern district of New York.

7 Q. Do you know Jacob Luchenheimer?

A. No, sir.

8 Q. You don't know where he is?

A. No, sir; I don't know the gentleman at all.

Mr. SAUNDERS: He is dead.

9 Q. Do you know how long the map from which that tracing was made has been on file in the office of the surveyor of Vanderburgh county?

A. No, sir; it came into my possession when I took the office.

10 Q. Who made the tracing you now hold in your hand?

A. I made it.

11 Q. Will you please mark this tracing Exhibit Z and
537 refer to it as such in your deposition?

A. (After marking exhibit as requested.) I have done so.

12 Q. Will you now please examine the map I hand you and state what that purports to be?

A. It looks like nearly an exact copy, with a few exceptions, of that tracing.

13 Q. Read at the bottom of the map what it purports to be.

A. Township No. 7 south of the base line, range No. 10 west of the meridian; surveyed by Jacob Fowler in 1806.

14 Q. Now, will you mark that map as Exhibit "Y" and refer to it as a part of your deposition?

A. (After marking map as requested.) Yes, sir.

15 Q. On what scale are the two maps "Y" and "Z" drawn, respectively?

A. Both drawn on the same scale—2 inches to the mile.

16 Q. Now, Mr. Sours, will you place the tracing called Exhibit "Z," taken from the map of 1857, upon the map marked Exhibit "Y," purporting to be made in 1856, so that the north and south section lines of section 14 shall correspond, bringing the lower extremities of those lines down to the points marked M and L on Exhibit "Y?" Have you done so?

A. Yes, sir.

17 Q. State whether the extremities of those north and south section lines now correspond exactly with the points marked M and L on Exhibit "Y."

538 A. Yes, sir; they correspond exactly.

18 Q. Now, then, will you take a pen and mark with a dotted line what appears on the map marked "Y" as the shore line from M to L as seen through this tracing?

A. Yes, sir. (Witness does as requested.)

19 Q. Now, will you take a pen and make a light mark around what purports to be the head of the island on map "Y?"

A. Yes, sir. (Witness does as requested.)

20 Q. Now, will you mark the first line "L, 1806?"

A. Yes, sir. (Witness does as requested.)

21 Q. Now, will you mark the other "H-I, 1806?"

A. Yes, sir. (Witness does as requested.)

22 Q. Now, you may state the position of the head of the island on the map marked "Y" with regard to the north and south section lines between sections 14 and 15. Will you state what its relative position is?

A. The head of the island is east of the line between 14 and 15.

23 Q. Now, from the measurement, about how far would you say it is delineated there, the scale being two inches to the mile?

A. Nearly a quarter of a mile.

24 Q. Where is the head of the island with regard to section 14, as shown on the map marked "Z?"

A. About a quarter of a mile—half a mile, I meant to say.

539 25 Q. From the line running through section 14—through the center of section?

A. Yes, sir; about half a mile.

26 Q. It is directly due south?

A. Yes, sir; about a half.

27 Q. Of section 14?

A. Yes, sir.

28 Q. Judging from the scale upon which this map is drawn, what is the greatest distance from the dotted line L to the shore line L on the map marked "Z?"

A. It is a little less than a quarter of a mile; I cannot get at it exact. That is the greatest distance.

29 Q. Now, will you please examine the large map marked Exhibit "C," filed with the deposition of Mr. Saunders, and state the location of the mouth of the bayou with reference to the north and south section line between sections 14 and 15?

A. Less than a quarter of a mile west of the section line.

30 Q. About how far west?

A. About the same as I stated before; located about the same place.

31 Q. I think you are mistaken; I think if you will look at your deposition you got it fully that far east of that line. But, without reference to this other map, is the mouth of the bayou, as delineated on that map, east or west of the north and south section line between sections 14 and 15?

A. It is west of the line a little less than a quarter of a mile.

540 32 Q. Now, where is Buck Island, represented on the large map marked Exhibit "C?" Is it east or west nearly of the section line between section 14 and 15?

A. West of it.

33 Q. How far west?

A. About a quarter.

34 Q. Now, referring to your tracing map marked Exhibit "Z," that being the line between section 14 and 15 (indicating), where would you locate Buck Island on that map? You can just answer about this way, if you wish—whether it is the first or second island from the head there?

A. It is the second island.

35 Q. From the head?

A. Yes, sir.

36 Q. Are you familiar with the land at the head of this island and contiguous from actual observation?

A. Yes, sir; I have done some surveying there for Mr. Inglebrandt in section 15.

37 Q. How long have you known that particular locality from actual observation?

A. I think it has been nearly a year since I have been up in that neighborhood doing some surveying.

38 Q. The first time?

A. Yes, sir; it is just recently. I never was up there that I recollect but once, and that was about a year ago.

541 Cross-examination.

Questions by A. H. SNOW, Esq.:

39 Q. At what time were you county surveyor?

A. I was elected two years ago the coming election.

40 Q. Had you ever previously held the position of county surveyor?

A. No, sir.

41 Q. At what time did you cease to be county surveyor?

A. It is three months, I think. I cannot tell you exactly the time; I think it is probably three months ago.

42 Q. Under what circumstances did you cease to be surveyor?

A. My bondsmen went off my bond.

43 Q. By whom was your successor appointed?

A. Appointed by the county commissioners of Vanderburgh county.

44 Q. Where is the original of the map marked Exhibit "Z?"

A. It is on file in the county surveyor's office.

45 Q. What is the character of the original of this map? Is it a lithographic map or a surveyor's map or a tracing?

A. Well, there are two, the tracing and the original.

46 Q. From what is that taken?

A. From the original—the original map on file in the office.

47 Q. Is that a lithographic map or a map made by a surveyor?

A. It is a lithographic map.

48 Q. I understand you to say that this map marked Ex-
542 hibit "Z" is a copy or tracing of the map marked Exhibit "Y." Did you so state it?

A. No, sir; I said it was so near the original that I took that to be the original.

49 Q. You took Exhibit "Y" to be the original of Exhibit "Z?"

A. Yes, sir; when I saw it I made the remark that was made from my tracing because it is so similar.

50 Q. Because it is so similar?

A. Yes, sir.

51 Q. What is there that is so similar about the two maps?

A. Everything. Look at them and see.

52 Q. Is there anything similar except they purport to be on the same scale?

A. Yes, sir. Lay one on top of the other and it shows for itself.

53 Q. Now, I will lay one on top of the other, or will you please lay one on top of the other, so that the section lines of these two maps exactly correspond?

A. I don't think that they exactly correspond; but when you take one map, made by one party years before, and lay it onto another and get them to correspond as near as these do——

54 Q. (Interrupting.) Make the section lines correspond as they are here?

A. Yes.

543 55 Q. No; make the section lines correspond; I will have it correspond with the river line afterwards, but make the section lines correspond first.

A. (Doing as requested.)

56 Q. Make them exactly correspond.

A. Well, it is the stretching of the muslin.

57 Q. Now, how near does the line marked "L 1806," on Exhibit "Y," correspond with that on Exhibit "Z?"

A. Bring them down as near as you can and they correspond with the dotted line exactly.

58 Q. Will you please state whether the section lines, as I hold the two maps at present, of section 14 correspond?

A. With what?

59 Q. With the section lines of section 14 below.

A. The section lines of what?

60 Q. The section lines of 14, the fractional part of section 14.

A. Correspond with the tracing?

61 Q. Whether they correspond with the section lines of section 14 below.

A. No, sir; they do not. You want to twist them around there (illustrating).

62 Q. Well, then, they don't correspond at this other point?

A. Well, you can't make them correspond; it is the difference between the shrinkage in this map and the original on file. You take a lithograph map and it always shrinks, and that map

544 was taken from the Government records; but trace them back and you will find them both the same; both copies of the same paper.

63 Q. You refuse to state whether those lines correspond, do you?

A. Why, you can't make them correspond.

64 Q. Just look and see. Do the lines now, as I hold them, correspond with the lines of section 14, below?

A. No, sir.

65 Q. Can they be made to correspond?

A. Not between those two sections, as platted.

66 Q. Can these two lines be made to correspond?

A. Yes, sir, if run out and both platted at the same time.

67 Q. Now, can the lines of these two maps be held in any such way as to correspond with each other?

A. Those two points, as I told you—take those two points; as stated, they will correspond exactly with that dotted line.

68 Q. Do you know by whom the original of the map marked "Z" was made?

A. It can be found out easily by tracing back.

69 Q. Do you know by whom the original map of which Exhibit "Z" is a tracing was made?

A. No, sir. Well, the lithographer's name is on there, but I don't know the name. It can be traced back to where it was made in New York. You can find it there—who made the original.

70 Q. Do you know who Jacob Luchenheimer was and
545 what his business was?

A. No, sir; I don't know anything about him.

71 Q. Do you know how this map came to be on file in the office of the county surveyor of Vanderburgh county?

A. Yes, sir. It was left there with other records that came into my possession.

72 Q. Do you know who put it into the office of the county surveyor?

A. No, sir; not any more than any other records. There are lots of county records there, and I don't know who put them in.

73 Q. Does the statement which you have made in your examination-in-chief that this map is a map of Vanderburgh county, Indiana, compiled and drawn from the best sources and authorities and published by Jacob Luchenheimer, real estate agent, Evansville, Indiana, 1857, and entered according to act of Congress in 1857 by Jacob Luchenheimer in the clerk's office of the district court for the southern district of New York, appear on the lithograph map which you said is on file in the county surveyor's office, or does it appear somewhere else?

A. No, sir; it appears right there in the office. I can produce it any time, and anybody can see it.

74 Q. I am speaking now of this title.

A. Yes, sir.

546 75 Q. Is that on the lithograph map?

A. Yes, sir; that appears on the map.

76 Q. Then, according to this statement, this map was compiled and drawn from the best sources by Jacob Luchenheimer—that is, this map, so far as you know, was drawn by Jacob Luchenheimer, real estate agent?

A. No, sir.

77 Q. By whom was it drawn?

A. I don't know. It does not state it was drawn by him.

78 Q. Why not?

A. "Compiled and drawn from the best sources and authorities, and published by Jacob Luchenheimer."

79 Q. What does the word "drawn" mean?

A. It means to draw anything.

80 Q. Does not this purport to be drawn by a real estate agent?

A. No, sir.

81 Q. Do you know that the lithographic copy on file is a copy of the original map?

A. It must be.

82 Q. All you know about it is what is stated in the title that is on the lithographic map?

A. It is on file in the office of the clerk of the district court of New York, and he can be referred to to see whether it is a correct map or not. The original figures are on there to be compared.

83 Q. Does it state on the lithographic map on file in the
547 county surveyor's office what the scale of this map is?

A. No, sir.

84 Q. The statement written on the exhibit that the scale is two inches to one mile is your own statement?

A. Taken from the original figures that are on that map (referring to Exhibit "Y")—that are on that tracing here. Take those figures and compare with the original drawing and they correspond exactly.

85 Q. You judge, then, that the map marked Exhibit "Z" is on the scale of two inches to the mile?

A. No judging about it.

86 Q. Because it is somewhat similar to Exhibit "Y?"

A. No judging about it; it shows for itself.

87 Q. You obtained that information by reason of the maps?

A. Yes, sir.

88 Q. Do you know where Buck Island is on the map marked Exhibit "Z?"

A. By reference to the number of sections—both correspond here on Exhibit "C."

89 Q. You merely judge that?

A. Producing the line on Exhibit "C"—producing the line down that corresponds with Exhibit "Z" as near as it can possibly be got at—it shows exactly where it is.

90 Q. You merely judge that the island, which you have sworn is Buck Island, is Buck Island. That is your opinion?

A. That is what?

548 91 Q. It is your opinion that the island which you have marked on Exhibit "Z" is Buck Island by comparison with Exhibit "C?"

A. It is called Buck Island on Exhibit "C," and what is called Buck Island on Exhibit "C" corresponds with what I was told was Buck Island on Exhibit "Z."

92 Q. That is all you know about Buck Island?

A. That is all I know about Buck Island.

93 Q. What did you state the map marked Exhibit "Y" was?

A. A map as furnished by the engineer's department of the Government at Washington.

94 Q. Do you know anything about that map of your personal knowledge?

A. This map (indicating)? No, sir; I never saw it before.

95 Q. On the map marked Exhibit "Y" you may state approxi-

mately again opposite what section line the upper end of Green River Island comes.

A. Well, it comes——

96 Q. Well, state approximately near what section line it is.

A. The section line dividing sections 14 and 15.

97 Q. You may state on the map marked Exhibit "C," approximately, near what section line the head of Green River Island is.

A. It comes very near to a line between sections 14 and 15. It is a quarter of a mile west of section 14, as the head of the island is shown on Exhibit "C."

98 Q. You may state approximately where the head of
549 Green River Island is on the map marked Exhibit "Z."

A. The center line of section 14—the north and south line just about hits the head of the island.

99 Q. Then, doesn't the map marked Exhibit "Z" show that the head of Green River Island is about a half mile further east or up the river than it is on either Exhibit "Y" or Exhibit "C?"

A. No, sir.

100 Q. You say it does not (indicating on the map)?

A. Well, that will do. Well, on this map (Exhibit C) it runs back.

101 Q. Taking the head of the island, what is marked as sand and gravel on Exhibit "C," where does the Green River Island end on map "C?"

A. Well, Green River Island ends on map "C" something less than a quarter of a mile——

102 Q. (Interrupting.) I was taking the sand and gravel as a part of Green River Island. Now, where does the island end on map "C?"

A. Between sections 14 and 15.

103 Q. Do you know who lives at present on section 14 next to the river?

A. Personally, I don't. I think that Mr. Inglebrandt used to own some property there, but I don't know now. I think I surveyed some property there.

104 Q. Where does Mrs. Aiken live; on what section?
550 A. I do not know. I never did any work for her.

105 Q. Does the map marked Exhibit "Z" show the head of Green River Island about half a mile east or further up the river than the map marked Exhibit "Y" does?

A. Does Exhibit "Z" show the head of the island——

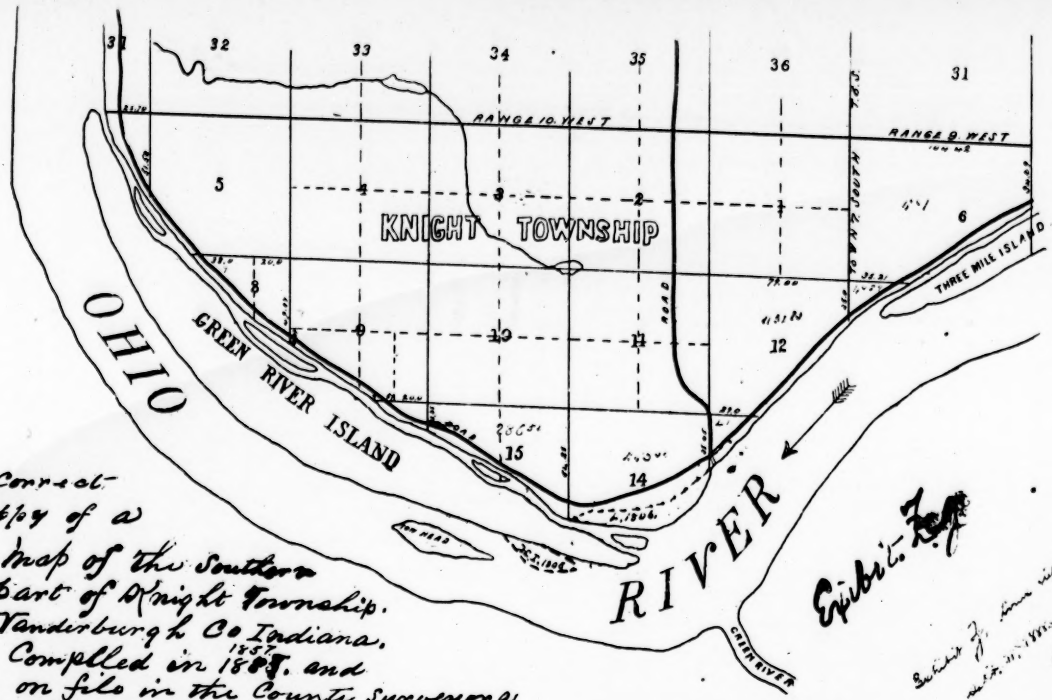
106 Q. (Interrupting.) Does Exhibit "Z" show the head of Green River Island to be about one-half a mile further east or up the river than Exhibit "Y" does?

A. Yes, sir; just about. Yes, sir; Exhibit "Z" shows the island to be about half a mile further up the river than Exhibit "Y" does.

Exhibit Y. Plate 1.

Township № VII South of the Base Line, Range № X West of the Meridian in

Exhibit Z.



A Correct Copy of a Map of the Southern part of Knight Township. Vanderburgh Co Indiana. Compiled in 1857 and on file in the County Surveyors office of above County,

Scale 2 in to one mile

Franklin Sours C.E.
Evansville Ind 1888.

Exhibit Z.

Re-examination.

Questions by Hon. J. PROCTOR KNOTT:

107 Q. In reply to one of Mr. Snow's questions you stated that the map marked Exhibit "Y" purported to come, as I understood you, from the Chief Engineer's office?

A. The Chief Engineer's office at Washington.

108 Q. Examine the certificate accompanying the papers and see where it does come from.

A. It comes from the Commissioner of the General Land Office, Washington, D. C.

Mr. KNOTT: Now, we propose to put in evidence these two maps marked as Exhibits "Y" and "Z," together with the certificate and the field-notes accompanying Exhibit "Y."

551 Mr. SNOW: Subject, of course, to the general stipulation as to objections.

Gov. KNOTT: That, of course, is understood.

The papers above referred to being in the words and figures following, to wit:

(Here follows diagram marked Exhibit Z.)

552 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August* 27, 1888.

I, S. M. Stockslager, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copies of the plats of the survey of townships 6 and 7 south, range 10 west of the 2nd principal meridian, in the State of Indiana, and extracts from the field-notes of the survey of said townships, executed by Jacob Fowler in 1806, are true and literal exemplifications of the official township plats and so much of the official field-notes of said survey on file in this office as said extracts purport to represent.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. M. STOCKSLAGER,
Commissioner of the General Land Office.

(Here follows diagram marked Exhibit Y.)

553 T. 7 S., R. 10 W., 2d mer., Ind.

* * * * * * *

South East boundary var. on the E. boundary of sec. 1.

* * * * * * *

80.00 Set post cor. to secs. 1 & 12, from which a honey locust 33 in. dia. brs. N. 29 W. 23 lks. & an ash — in. dia. brs. S. 76 W. 45 lks.

31–o

Land level; timber, oak, ash & walnut, hickory & honey locust.

South On E. boundary of sec. 12.

25.25 Set post on bank of the Ohio, from which a hickory 14 in. dia. brs. S. W. 30 lks. & a hickory 7 in. dia. brs. S. 56 E. 40 lks.

Land, &c., same.

Dec. 13, 1805.

JACOB FOWLER, *D. S.*

* * * * * * *

East On random line between secs. 11 & 14.

4.00 2.00 Pond course N. 50 W.

40.00 Set temp'y post for cor. to ¼ sec.

80.70 Intersected N. & S. line at the post set for cor. to sec. 10, 11, 14, & 15.

Rich land; walnut, hoopwoods, box elder, & ash.

West 554 On true line between secs. 11 & 14, T. 7 S., R. 10 W.

40.35 Moved temp'y post to aver. dist. on true line for cor. to ¼ sec. post, from which a hoopwood 12 in. dia. bears N. 23 W. 21 links dist., & a hoopwood 14 in. dia. bears S. 78 W. 24 links dist.

T. No. 7 S., R. 10 W., 2nd mer.

80.70 To a post set for cor. to secs. 10, 11, 14, 15.

* * * * * * *

South Between secs. 13 & 14, T. 7 S., R. 10 W.

35.05 To a post set on the bank of the Ohio, from which a hoopwood 20 in. dia. bears N. 64 E. 5 links dist. & a hoopwood 12 in. dia. bears N. 72 W. 45 links dist.

Land level and rich; timber, walnut, hoopwood, & ash.

* * * * * * *

South Between secs. 10 & 11, T. 7 S., R. 10 W.

* * * * * * *

80.00 Set post for cor. to secs. 10, 11, 14, & 15, from which a hoopwood 12 in. dia. bears S. 79 W. 27 links dist. & a hoopwood 16 in. dia. bears N. 36 E. 22 links dist.

Land level; timber, oak, hickory, walnut, ash, elm, & hoopwood.

South Between secs. 14 & 15, T. 7 S., R. 10 W.

19.65 A hickory 36 in. dia. stands on the line.

40.00 555 Set a post for cor. to ¼ sec. cor., from which a box elder 12 in. dia. bears N. 18 W., 12 links dist.,

64.25 to a post on the bank of the Ohio, from which a cottonwood 10 in. dia. bears S. 42 W., 5 lks. dist., & a cottonwood 12 in. dia. bears S. 83 E., 14 lks. dist.

Land rich; cane, walnut, hoopwood, ash, & box elder.

* * * * * * *

South — Between secs. 9 & 10, T. 7 S., R. 10 W.

* * * * * *

80.00 — Set post cor. to secs. 9, 10, 15, & 16, T. 7 S., R. 10 W., from which, T. No. 7 S., R. No. 10 W., 2nd mer., an elm 14 in. dia. bears N. 35 W., 32 links dist., and a B. elder 12 in. dia. bears S. 22 E., 30 links dist.

Land level; timber, oak, hickory, hoopwood, box elder, & ash.

* * * * * *

South 16.23 — Between secs. 15 & 16, T. 7 S., R. 10 W., to a post on the bank of the Ohio, from which a hoopwood 12 in. dia. bears S. 3 E., 15 links dist., & a mulberry 10 in. dia. bears S. 66 W., 4 links dist.

Land rich & cane; timber, walnut, hoopwood, ash, & box elder.

West 29.67 — 556 Between secs. 9 & 16, T. 7 S., R. 10 W., to a post on the bank of the Ohio, from which a hoopwood 16 in. dia. bears N. 82 E., 27 links dist., & a hoopwood 24 in. dia. bears N. 48 W., 54 links dist.

Rich land; cane, walnut, hoopwood, ash, & box elder.

* * * * * *

South — Between secs. 4 & 5, T. 7 S., R. 10 W.

* * * * * *

80.00 — Set post for cor. to secs. 4, 5, 8, & 9, T. 7 S., R. 10 W., from which a hickory 24 in. dia. bears N. 56 W., 13 links dist., and a hickory 12 in. dia. bears S. 84 E., 26 links dist.

Land level and part wet; timber oak, hickory, and gum; timber ash, elm, & maple south of the pond.

West 40.00 — On true line between secs. 5 & 8, set post for cor. to ¼ sec., from which a box elder 12 in. dia. bears N. 18 E., 3 links dist., & a box elder 13 in. dia. bears N. 82 W., 38 links dist., T. No. 7 S., R. No. 10 W., 2nd mer., to a walnut 13 in. dia. standing on the bank of the Ohio, from which a hoopwood 24 in. dia. bears N. 38 W., 58 links dist., & a maple 22 in. dia. bears S. 55 E., 65 links dist. 58.00

Land level and rich; timber, cane, walnut, B. elder, hoopwood, & ash.

South 40.00 — 557 Between secs. 8 & 9, T. 7 S., R. 10 W., set post for cor. to ¼ sec., from which a hoopwood 14 in. dia. bears N. 53 E., 13 links dist., & a B. elder 12 in. dia. bears N. 49 W., 20 links dist., to a post on the bank of the Ohio, from which a hoopwood 22 in. dia. bears S. 37 E. 38 links dist. & a H. locust 23 in. dia. bears N. 31 W. 50 links dist. 49.84

Land, rich bottom; timber, walnut, hoopwood, box elder, & ash.

April 18, 1806.

* * * * * *

West — On S. boundary of sec. 32, T. 6 S., R. 10 W.

* * * * * *

80.00 Set post cor. to secs. 31 & 32, from which a maple 20 in. dia. is corner & a box elder 21 in. dia. brs. N. 40 W. 49 lks. & a maple 22 in. dia. brs. 85 W. 29 lks.

Land, &c., same.

West 25.70 On S. boundary of sec. 3, T. 6 S., R. 10 W., set post on bank of the Ohio, from which a cotton-wood 30 in. dia. brs. S. 66 W. 7 lks., & an elm 10 in. dia. brs. N. 45 E. 23 lks.

Land low & rich; cotton-wood, maple, elm, & sycamore.

April 3d, 1806.

JACOB FOWLER, *D. S.*

558 T. No. 7 S., R. No. 10 W., 2nd mer.

* * * * * * *

South 40.00 42.75 51.50 Between secs. 5 & 6, T. 7 S., R. 10 W., set post for cor. to ¼ secs., from which a hoopwood 13 in. dia. bears N. 44 E. 40 lks. distant, & a hoopwood 20 in. dia. bears N. 80 W. 61 lks. distant to a hoopwood 33 in. dia. — stands in the line, to a post on the banks of the Ohio, from which a maple 20 in. dia. bears S. 18 E. 37 links dist. & a maple 21 in. dia. bears N. 61 W. 27 links dist.

Land lies in low, rich bottom; timber, ash, hoopwood, & box elder.

April 19, 1806.

* * * * * * *

559 T. No. 6 S., R. No. 10 W., 2nd mer.

Chains. Meanders of the Ohio from a post between towns. 6 & 7, in range 10, secs. 6 & 31.

N. 12 W. 36.00.
N. 5 E. 38.83 to a brook 50 links wide.
N. 10 W. 7.80 to a post between secs. 30 & 31.
N. 16 W. 13.50.
N. 26 W. 22.44.
N. 37 W. 13.00.
N. 52 W. 13.59.
N. 69 W. 11.94 to a post between secs. 25 & 30, ranges 10 & 11, ts. 6 & 6 S.

April 20th, 1806.

T. No. 7 S., R. No. 10 W., 2nd mer.

* * * * * * *

Meanders of the Ohio river, beginning at a post on the bank between sects. 9 & 16.

N. 63 W. 14.60.
N. 61 W. 44.00 to a post between secs. 8 & 9.
N. 57 W. 25.00.
N. 54 W. 14.20.
N. 46 W. 30.00.

N. 40 W. 7.12 to a B. walnut between secs. 5 & 6.
N. 40 W. 19.50.
N. 34 W. 19.34 to a post between secs. 5 & 6.
N. 32 W. 17.75.
N. 25 W. 40.00 to a post between secs. 6 & 31, towns. 6 & 7, range 10 west.

560 Meanders of the Ohio, beginning at a post between secs. 9 & 16, & thence up the river.

S. 60 E. 26.31.
S. 69 E. 7.75 to a post on the bank between T. No. 7 S., R. No. 10 W., 2nd mer.

Chains Secs. 15 & 16.
S. 69 E. 20.50.
S. 70 E. 19.00.
S. 56 E. 22.75.
S. 49 E. 18.50.
S. 45 E. 10.25.
S. 63 E. 5.00 to a post between secs. 14 & 15.
S. 73 E. 5.50.
S. 82 E. 30.00.
S. 88 E. 8.50.
N. 70 E. 10.00.
Observations across the Ohio to a point of land above the mouth of Green river S. 49 E. to the point; thence—
N. 49 E. 16.60; thence south 17.30 to the same point.
N. 49 E. 16.00.
N. 31½ E. 26.25 to a post between secs. 13 & 14.
N. 37 E. 24.25.
N. 42 E. 22.30 to a post between secs. 12 & 13.
N. 41½ E. 5.61.
N. 37 E. 16.50.

561 N. 46 E. 47.27 to a post between secs. 7 & 12, ts. 7 & 7, ranges 9 & 10.

April 20, 1806.

JACOB FOWLER, *D. S.*

562 109 Q. You stated that the head of the island, as shown on map "Z," was about half a mile further up the river than it is as shown by map "Y?"

A. Yes, sir.

110 Q. Now, then, is or is not the head of the island on Exhibit "C" as compared with Exhibit "Z" one-third of a mile west?

A. Yes, sir.

Questions by Mr. SNOW:

111 Q. In your reply to this last question of Mr. Knott's, what do you mean by the head of the island on map "C?"

A. As shown here (indicating)? Here is the head of the island (indicating).

112 Q. You mean where the bayou on map "C" runs in. You mean by the head of the island where the bayou runs in?

A. Where the bayou intersects the Ohio river on map "C."

113 Q. Do you mean at the point where it is stated on map "C" there is a cotton-wood in the channel, on what is said to be the bayou, because "where it intersects the Ohio river" is a very immaterial thing?

A. Well, I don't know. It is where the mark is.

114 Q. Give the name of that mark.

A. Yes, sir; the black mark called "cotton-wood four and a half feet," in the center of the bayou.

And further the witness saith not.

(Signature waived.)

Whereupon, at the hour of 12 o'clock and 15 minutes, the further taking of these depositions was adjourned until 2 o'clock p. m.

563 2 O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The taking of the depositions was resumed as follows:

WILLIAM WELLS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows.

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name?

A. William Wells.

2 Q. What is your age?

A. I will be eighty in October.

3 Q. Where do you live?

A. I live in Henderson county, a mile above the mouth of Green river. I own the house.

4 Q. How long have you lived there?

A. I do not recollect exactly; something near thirty years. I don't recollect whether it was three years before the year 1847 or not—1847.

5 Q. Have you ever lived on this side of Green River Island?

A. All the time; I was there every year; I cleared out three farms there.

564 6 Q. On the island?

A. I cleared two on the island and one on the Indiana side—the old Dave Aiken's place.

7 Q. Since what time have you been acquainted with the island bayou between the island and the Indiana shore?

A. I think I have been acquainted and traveled over it, I think, somewheres in 1820 or '23, maybe '25—'23 or something along about that. I cannot tell you exactly. I was young at the start.

8 Q. It was close to the year 1823?

A. I think something near there, and it may be '25.

9 Q. Since that time have you noticed any changes in the formation of the island and the bayou?

A. Oh, yes, sir. We traveled over it and knew everything.

10 Q. At your first recollection, in an ordinary stage of water in the Ohio river, how wide was the bayou?

A. Well, it was the full width, but at a—well, you might say a low, ordinary kind—well, at a boating stage you would see some banks or bars rise.

11 Q. Or little islands?

A. Well, they called them islands; they raised over the bars.

12 Q. How wide was that bayou from bank to bank on an average?

565 A. I never measured it particularly, but some places it is wider—I reckon two hundred yards or two hundred and fifty, and some places mighty near three hundred. I don't know as I can point out the widest places.

13 Q. Did you ever know steamboats or flat-boats to go through that bayou in an ordinary stage of water?

A. I went up twice in an ordinary stage—that is called a boating stage.

14 Q. An ordinary boating stage?

A. Yes, sir; twice; I think it was twice—once or twice—but then the channel had changed; when I went up it was straighter. That Buck Island was usually off on the left.

15 Q. About what time was it that you took those boats through there or went through on the boats?

A. I do not recollect; it has not been so very long ago; I could not tell exactly.

16 Q. Has it been within the last thirty years?

A. Yes, sir; I think it was within twenty years.

17 Q. At your first recollection what was the formation at the head of the island—that is, did the main channel of the bayou come between Buck Island, as it is called, and the Indiana shore, or was it between Buck Island and Green River Island?

A. Between Buck Island and the Indiana shore. The water ran around under the cotton-wood.

566 18 Q. The cotton-wood point?

A. Yes, sir; and ran around there, and then the water was narrow, and when the water was low the bar was a little out. It was a making there on the right—at the head of the island on the main Indiana shore.

19 Q. Do you know the place where Mrs. Aikens lives, that is now in section 14 of Knight township?

A. Widow Aikens?

20 Q. Yes, sir.

A. Yes, sir. Well, I am not acquainted with the place.

21 Q. How much has the mouth of the bayou moved down on the Indiana shore since you first knew it?

A. The mouth, or do you mean the head of the island?

22 Q. Well, say the mouth of the bayou or the head of the island, whichever you choose.

A. Well, the head of the island shifted off, which left the bayou down lower.

23 Q. How far, in your best judgment, has that mouth of the bayou moved down, in your recollection?

A. The channel?

24 Q. Yes, sir.

A. I don't know; I never measured it. I suppose it must have moved down one or two hundred yards, or maybe more; it may be two hundred yards; I cannot tell exactly.

567 25 Q. Hasn't the land on the Indiana shore from Mrs. Aikens' down been making very largely?

A. Towards the lower part of it it has been making—filling more or less.

26 Q. Between Mrs. Aikens' and the head of the island how much land do you suppose has made on the Indiana shore, in your recollection?

A. Well, that filled from where the line used to run; that filled that; and there is standing corn on it.

27 Q. About how many acres did it make?

A. I can't tell exactly; right smart. I don't know whether five or six or eight or ten; I can't tell. I never measured it.

28 Q. Did you observe that land while it was making?

A. I did.

29 Q. Were you or not frequently on it?

A. Yes, sir; I have run many a foot race on it, and played on it, and wrestled on it, as it was making and the cotton-woods commenced growing up.

30 Q. Were there, in your first recollection, any large trees growing between the banks—the first banks of the bayou?

A. There were large trees growing on the Indiana State bank. There was a basin or deep hollow where it made more decidedly—a deep basin next to the Indiana shore—which has been filling ever since. It was miry and deep—that is, above the head of Buck Island.

568 31 Q. From the upper end of the bayou down to the end of it were there large trees growing between the first banks, as they are called—between the banksof the bayou? Were the trees growing in the bayou?

A. No, sir; not in the bayou. You mean inside of Buck Island. On the Indiana side of Buck Island, do you mean?

32 Q. Either there or down below.

A. Yes, sir; trees grew down there—big, heavy trees, tolerably heavy.

33 Q. Were they growing in the bayou?

A. Not in the bayou. They were growing on the side, on the Indiana line.

34 Q. Do you know anything about the growth of cotton-wood trees? If so, tell any experience that you have had about their growth.

A. I don't know particularly, only what I did myself. I took a cotton-wood tree here off the Slatin land—it was Slatin's at the time,

the land which Captain Dickson bought in 1847. I took three or five or maybe six cotton-wood trees, and I set them out right above my house. They were growing, but I cut down all but one, and that cotton-wood is there now, and will measure, I think—that is, up so high (indicating)—four feet, if not four feet and four inches;
569 I don't know about that. I looked at it there the other day. I was talking the other day to a man about it, and he said it was about four feet and a half.

35 Q. How large were those trees when you set them out?

A. Oh, I picked them up in my hand.

40 Q. Were they larger than your wrist?

A. Oh, no; maybe about that size (indicating).

41 Q. An inch and a half in diameter?

A. About that, I reckon; maybe not so much.

42 Q. And now you say that at two and a half to three feet above the ground it is how large?

A. Yes, sir; about two feet or two and a half above the ground I think it will make four feet, if not four feet four inches; just across the stump, I think, about that; maybe not quite so large—bark and all, you know. It has bark of an inch or two. I think that is about the size of cotton-wood bark.

43 Q. Did the old State road on the Indiana bank use to run as it now does, opposite the head of the island?

A. No, sir.

44 Q. How did it formerly run, say, thirty years ago?

A. It ran up here (indicating), and up this ridge, and it—I forget the name of the man who owned it; he was cashier of the First Indiana Bank here; he owned the place. We went on down on the left of that, the bayou, and we went across, and we
570 came in below a piece of land. I don't know who owned it then; Lacey bought it afterwards; a man by the name of Lacey. The names, you know, I can't recall. Then we took up the bayou; and this river road was made some years afterwards, some ten, I reckon.

45 Q. Now, look at the drawing marked Exhibit "C" (exhibiting the same to witness).

A. I can — tell anything about that.

46 Q. Then look at the one marked Exhibit "Z," and see how the road is represented on it (exhibiting the same to witness).

A. It ain't like it used to be.

47 Q. Here is the section line between sections 14 and 15 (indicating on map "Z"), and here is the Aikens place down in the southwest corner of section 14. Here is the Aikens place on this map (referring to Exhibit "C"); that narrow yellow line going around that way (indicating) represents the road as it is now?

A. Yes, sir.

48 Q. On this map (referring to Exhibit "Z") it leaves out that bend and runs pretty nearly straight up to the section line. Now, I ask you to examine these and state whether thirty years ago the State road ran as it is put on Exhibit "Z," this one, or as it is on Exhibit "C," the other one.

A. It ran here this way (indicating). It ran diagonally that
571 way (indicating), from the way I look. I can't tell it accurately.

49 Q. It ran around sort of that way (indicating)?

A. Yes, sir; it came sort of round, and it came up here straight, and then came on here, you know; and here it was a making ground (indicating), and they kept the road on the old line, what was called the Indiana State line, I think they called it.

50 Q. The Indiana State line ran then about as that road would be extended—tolerably straight—out toward the Aikens?

A. Yes, sir; pretty tolerably straight, but I think maybe it varied a little; I don't know what was the cause of it—some low ground.

51 Q. Then look at this map (referring to Exhibit "Z") and, as representing it thirty years ago, say if this is about right.

A. Well, I don't know about thirty years ago. Let us see. Thirty years ago—I don't know but what they did change it. They made a farm in here (indicating) and run it around the farm, right around here at Buck Island, and then turned it up here (indicating). I think they did thirty years ago.

52 Q. Then formerly it ran pretty near straight?

A. Yes, sir; before this farm was made in there.

53 Q. Then it formerly ran as put down on this map—Exhibit "Z"—did it? You say instead of coming down here and turning around it ran pretty near straight?

572 A. This is the head of the island (indicating)?

54 Q. Yes, sir.

A. And that is the road (indicating)?

55 Q. Yes, sir; and this is the Aikens place?

A. Well, that is below the head of the island; it did not come down there.

56 Q. Now I ask you to examine the two maps mentioned.

A. This is the Garrett farm here (indicating).

57 Q. Yes, sir; I suppose so. It is the next below Mrs. Aikens.

A. Well, it was not. It used to be the Parker land. That used to be their land, and they bought that section, and the Aikens came up here (indicating).

58 Q. That land now seems to be held by Inkerbrandt & Conrad.

A. Yes; I reckon; I don't know them.

59 Q. Do either of these maps correctly represent the road as it used to run, in your recollection?

A. Well, sir, it don't; not from the island and all. I suppose that is the island (indicating on Exhibit "Z")?

60 Q. Yes, sir; running up to here (indicating); that is the island.

A. That don't run there right.

61 Q. That is all up above the head of the island now?

A. Yes, sir.

62 Q. This is where the head of the island is (indicating)?

A. Yes, sir; down there; I reckon it is about there now.

573 63 Q. Don't mind the dotted line on there; that is no part of the map. On this map (referring to Exhibit "C") the head

of the island is represented as coming around about here (indicating).

A. Yes, sir; it can't be, because this is Buck Island here (indicating).

64 Q. This is Buck Island (indicating)?

A. I suppose so.

65 Q. Well, take it that this is Buck Island here, right under the figure 15?

A. Well, it ain't right at all; if it is, there is the tow-head.

66 Q. What I want to get at is, Does this map, Exhibit "C," that represents the road as bending down here at the head of the island nearly to the river bank and then running up——

A. (Interrupting.) Since they put that farm in there.

67 Q. That road ran pretty nearly straight formerly, with something of a curve towards the river?

A. A little sort of running around until it gets up here (indicating), and then turns around with the circling of the bank of the river.

68 Q. Then, was that road formerly near the river bank at the time it ran that way?

A. Why, it was not very near; it was some distance from it. The river bank had made a little. That shape isn't exactly to my idea—this running here (indicating). Well, this has been making
574 since I first went down there. Well, it is here; wherever the head is here.

69 Q. Here is where it is represented as being now.

A. Well, it must have been washing off; it came down to about there (indicating), and then when this washed off it made that head there (indicating).

Question by Mr. SNOW:

70 Q. This is a map, made a few days ago, representing the way things are now?

A. Well, I don't know how they are now.

Questions by Governor KNOTT:

71 Q. You say this road ran pretty nearly straight up to where it got to the Aiken's farm?

A. Before it got to Aiken's farm it turned; there at the cottonwood corner between the islands.

72 Q. Where was that road, with reference to the Indiana State line, as then understood?

A. Right along the State line; they called it the State line. It was the only mark there.

73 Q. You say the marks of the line were there?

A. Of the old lines they said were the State lines, and they ran to it. They showed me corners when I first went down there. This man Parker had come in there and bought this lower tract that I showed you there. I think he bought it from the Govern-
575 ment; I don't know. Then he sold the end of it off there. I forget the man's name that owned the land back of it.

74 Q. Are any of those landmarks that you know of established by the old Government survey standing there still?

A. No; I don't know whether it is or not. You see I have not traveled down there for a good many years; down that bayou. I did go down in a buggy once. I was sick, and I could not tell anything about it; I did not notice it.

75 Q. Have you personally known any of those landmarks to be destroyed?

A. Oh, I destroyed one myself; a large sycamore; I cut two down.

76 Q. You cut down two?

A. Yes, sir; they were close together. It is on the Aiken's place, on the bayou below that. I was afraid to cut it, but they said to cut it in order to have the road closer to the bayou. It made a crook.

77 Q. What was the lowest water in the Ohio river at your earliest recollections?

A. Thirteen, eleven and a half, and up to fourteen and fifteen. It was irregular; sometimes bars would wash out and make the channel deeper.

78 Q. What do you mean by eleven and a half?

576 A. Inches deep in the channel; you would touch the bar at thirteen to thirteen and a half feet.

79 Q. What rise, in your judgment, above the lowest water would make the water run through this bayou between Green River Island and the Indiana shore at your early experience?

A. Well, I know more about the time I came down. I never knew it was a—I came down in a skiff; we came down and went down over the bar and went to the right of that Buck Island. The bayou was not crookedways then as it is now. I went down to the widow Wilkins. The other man, I can't recollect his name.

80 Q. How deep was the water in the river at that time; when you came down there?

A. I did not measure; it was pretty low; the boat began to stick on the bars, and we had to put across to Three-Mile Island; up at that regular bar at Billy Aiken's place we ran into that shore—we ran into that bar; we came down at night; the boys knew the route, but I did not know it; it was the first time I was ever down there.

81 Q. According to your best judgment, how deep was the water?

A. It may have been three feet and a half and it may have been five; but the boats would stick on the bar—flat-boats, heavy-loaded flat-boats.

577 82 Q. You are satisfied the water in the river was not over five feet deep.

A. I don't think it was—that is, over the bar; that is the first time I ever came down there; I was young.

83 Q. Do you know the bayou has filled up much in your recollection?

A. Why, certainly. Down at the Aidelott place—the widow Wilkins, that is owned by the Angels, I think, widow Angel—we crossed in canoes there; and horses—it was miry, and if you crossed

them over it would make them about belly deep or more, and they were afraid to ride them. I do not know but what I have seen one or two mire there, but I forget; it seems to me so long ago I can't tell. All that bayou used to be pretty miry, very miry.

84 Q. How much, in your judgment, has that bayou filled up at the head?

A. Well, I don't know now; I have not looked at it lately to see; it must have filled a good deal; I expect it hardly runs through at a middling stage now; whether it does or not I don't know; Dr. Yates ought to know whether it runs through at middling stage.

85 Q. Take it as true that it did not run through there by, say, three feet in this last rise of the river, how much would you say it had filled in?

578 A. It must have filled in some twelve feet; I could not tell exactly; it must have been twelve or fourteen feet, I reckon. I reckon it must have been that, anyhow. It looks like to me more, because it seems to me I came through that bayou and landed at home and pulled my skiff through and it was not as high as it was this last time by ten or twelve feet.

86 Q. How long ago was that?

A. That has been some time ago; some time along since 1847. I used to come down here in a skiff and go up the bayou. I would come down here and buy what I wanted.

87 Q. Do you remember any trouble occurring on the Indiana side of the line and the men going down under the bank to avoid the Indiana officers?

A. Oh, that was done constantly; and they ran across—horse racing, playing cards, and such like as that.

88 Q. Were those Indiana men that would do that when the officers got after them?

A. Oh, there would be no officers; they would go out, and without seeing the officers the men would get into a quarrel and come over here, and it would work the same on this side and they would go over there.

579 89 Q. Well, I did not ask you about that?

A. No; you did not ask me.

90 Q. Was it not universally recognized that that line was upon the Indiana bank of the bayou?

A. Why of course it was; that was understood by all parties. People were afraid to infringe on that side, afraid of the McClains, afraid of their indicting or catching them and sometimes treating them badly.

91 Q. Do you know of any parties who worked slaves on the island?

A. Yes, sir; plenty of them.

92 Q. Up to what time did they do that?

A. They worked slaves clean on until the trouble got up.

93 Q. You mean until the slaves were emancipated?

A. Yes, sir. I don't know how many they worked.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

94 Q. At what season of the year did you work on Green River Island?

A. I was there all the time. I could not tell because I lived there and worked there and hired there and turned ground.

580 95 Q. What was the condition of the bayou in the summer, when you first knew it, at times of lowest water?

A. At the time I first knew it, at the head it got pretty near dry.

96 Q. How would it be farther down the bayou?

A. There would be deep water and shallow water. I measured it at one time, I believe, below where Garrett lived—let me see, it was right back of Stansbury's, I believe; it was right there where I ran the measure down and it was either thirty or sixty feet deep, I forget which. I had gone up in the canoe. I was living on the bayou and I had the line there on Dave Aiken's place at that time.

97 Q. What did you measure it to be?

A. I think it was thirty feet and maybe deeper, maybe sixty feet. I just put down the line below where this drift rack was formed. I believe it was behind Stansbury's.

98 Q. Was that in the bayou?

A. In the bayou.

99 Q. Was it in a hollow?

A. That was at a hollow.

100 Q. There was a trout-line around that hollow?

A. No, sir; there was a line off that way (indicating). It ran through and took a turn. It was where the drift rack began

581 to fill up so bad. It was '32—was the beginning of the work of filling up.

101 Q. In the summer time the water did not run through at the head of the bayou when you first knew it?

A. At right low water it did not. We used to throw a rail or a plank or two across where it ran through to walk over. Sometimes the boys would have it there and little swells would come there and wash it out, and sometimes it would wash out from the upper bars. I never saw it as deep at the head as the channel of the Ohio river.

102 Q. What season of the year was it when you went down in a skiff through the bayou; what month was it?

A. Well, I forget; it was in the fall.

103 Q. How late in the fall was it?

A. I don't know; I don't know whether it was October or what time. It was in the fall.

104 Q. Was that after the fall rains?

A. Oh, no.

105 Q. Was it about the time of the fall rains?

A. The fall rains come nearly in October.

106 Q. And you went down before or after that time?

A. Well, you may count the fall rains as you please; sometimes the fall rains come in July and sometimes in August; summer rains, as they call them. We can't tell what time; we have differ-

582 ent seasons. You may count back; sometimes you have the rains in August and clear through.

107 Q. How was it that year you went down in the skiff? Was there any freshet that year?

A. No, sir.

108 Q. What year was it?

A. Well, I don't recollect. It was somewheres in the '20's, '23, '25, or '27; along in those years. I couldn't tell because my mind was not on those things at all. I was young and rather looking out for work and to get something for it. Times were hard and money scarce, people poor and not much to eat.

109 Q. You said flat-boats were beginning to stick on the bars at that time.

A. It was getting low enough not to run over the bars; they did not, at any rate.

110 Q. The water was falling at that time, so that when you went through in a skiff there had been high water?

A. I don't recollect; it may have been rising; something like it. I recollect we went through. I didn't think about it until I was studying about it that I did go through.

111 Q. You say the boat stuck there?

A. Mind, I did not go down through the chute; I only
583 went down to the widow Wilkins.

112 Q. How far down was that?

A. It was half way down the bayou or more.

113 Q. Did you go in at the top of the chute or at the bottom?

A. Yes, sir; went in right at that island—at the top.

114 Q. You say boats were beginning to stick on the bars. How much water do you say there was in the channel of the Ohio river at that time?

A. I reckon between three and a half and five feet.

115 Q. How much in the middle of the channel?

A. Well, there must have been about nearly that; maybe five feet and a half. I could not say; I did not measure the channels. I was young when I came down.

116 Q. What makes you think it was three and a half to five feet?

A. Well, something. You know we had oars and had poles, and we went through and we would stick them down.

117 Q. Did you know that you were in the channel?

A. No; I don't know it, but the boys did. Maybe we ran over a bar; I don't know; I had to go by them.

118 Q. You don't know whether you were in the channel then or not?

A. Oh, no.

119 Q. When you first began to know about Green River
584 Island did the people used to cross from the island to Indiana in summer on the roads?

A. On the roads?

120 Q. Yes; were there roads on the island on which the people crossed in the summer?

A. Well, they crossed the places that were solid; they would drive across.

121 Q. How many places were there like that?

A. Well, they could cross, you know, at the head of the island by going out a little in the river—a little out in the Ohio; it was solider there. Then down there you would get good places and get bad. Now, here at this place, it would be a good crossing this high (indicating)—maybe knee deep or maybe belly deep, and be solid, tolerably solid; you would not mire; and maybe in this place (indicating) it would be miry. So down here, where Aidelott used to live—that is not the place—the Aiken's place, there is a place—it got so they could not drive across; it got muddy, got miry, so that they would mire.

122 Q. Did they use to cross there with horses and wagons, and did cattle use to go across there in summer between the island and Indiana when you first knew it?

A. Yes, sir; I took up cattle and come over there in
585 summer.

123 Q. Did people team across the bayou in summer and haul things across there when you first knew it?

A. Well, I don't recollect that there was any hauling done much across there.

124 Q. Couldn't they have hauled across there if they had wanted to when you first knew it?

A. Oh, after I was there awhile, you know, the sand settled in these depressions, but before that it was a mighty muddy place from the head to the foot, pretty much. There were places where you could cross, and right there at Garrett's was a place for a good while, but there came to be standing water there.

125 Q. You stated, I believe, that you went twice through the bayou on a flat-boat?

A. On a steamboat; once or twice. I forget.

126 Q. What season of the year was that?

A. Well, sir, it was, I believe, in the spring, maybe—maybe fall. I forget.

127 Q. Was that in time of high water?

A. Well, in middling stage.

128 Q. Were the bottom lands around there overflowed when you went through the bayou on a steamer?

A. Up where the island is?

129 Q. Around Green River Island, on this side, were the
586 bottom lands overflowed when you went up there on the steamer?

A. No; not that I know of, but there was some water on the land I owned.

130 Q. Your land above Green river?

A. Yes, sir.

131 Q. How much water was there on your land?

A. I couldn't tell; it ran up there in the slough.

132 Q. How much water does it take in the river to overflow your land there?

A. Well, it takes about—we know how much water there is in the river now. Do you know?

133 Q. No; twelve feet, they say.

A. Well, it was on some of my land six feet or five feet.

134 Q. The water was six feet on your land when you went through on the steamer?

A. No; I don't say that.

135 Q. About a week ago it was up to twenty-five or twenty-six feet, and how much was it over your land then?

A. About five feet on my land, I think.

136 Q. Then you think it would take about twenty-one feet to cover your land if it was five feet over your land in this last rise?

A. Well, I have got higher ground that I live on.

587 137 Q. Go back to my first question. After having made these calculations, how much water, in your judgment—how much was the height of water above low-water mark in the river at the time you went through the bayou on the steamer?

A. Well, I have seen them go over the farm on steamboats; but as to the stage of the water, I think it was somewhere about middling stage. You can get Captain Yountz. He was the man who ran the boats.

138 Q. What year was this you ran up the bayou in a steamer?

A. I don't recollect. I could not say certainly about it.

139 Q. Was it twenty years ago?

A. It may have been and might not have been. It was before our big last floods came. You remember we had four floods together. Seventy-four is the flood that destroyed everything. We had four floods right in ahead of that, three before that, and that was the fourth one.

140 Q. You went up between 1860 and 1870, then?

A. I don't recollect exactly the time; I couldn't tell exactly.

141 Q. Had there been a flood just before you went up in the steamer—any freshet, do you remember?

588 A. Well, I think there had been a year two before, or something.

142 Q. I mean immediately before?

A. Right immediately?

143 Q. Yes, sir.

A. Well, I don't know but what the river was falling then; I forget; but the timbers were leaning over, and there was danger of caving; I know he said there was that danger.

144 Q. How far up the bayou did you go?

A. On the steamer we went from there (indicating) to here (indicating). We went up the bayou and out, and then he took me up home and went up Green river.

145 Q. How large a boat was this?

A. Well, are you acquainted with the boats on the river?

146 Q. What was the name of it?

A. Spottsville.

147 Q. How long was the boat?

A. I can't tell.

148 Q. Was it fifty feet long?

A. I can't tell you how long, but I suppose she must have been longer; she had a cabin to her.

149 Q. Did you go up on the same steamer both times?

A. I don't know as I went twice or once; I forget. It seems to me like I went twice, but once I know I went through.

589 150 Q. You are sure you went up the bayou?

A. I am sure; I ought to know. I have a pretty good recollection of that. I went up the bayou, and I went to the right hand of Buck Island, and ran under the head of Green River Island and the edge of the timber; ran to the left of the timber.

151 Q. Do you remember whether the water was over the State road at the side of the bayou at the time you went up?

A. No, sir.

152 Q. Was the water over that?

A. No, sir; we went right around; after we went out of the bayou we turned up and went up there by Mrs. Aiken's and over to the mouth of Green river and up to my house and put my stuff off, and then he went up to Green river.

153 Q. Did you go up through there in the day-time?

A. Yes, sir; before dark; got home before sun-down.

154 Q. You think this was in the spring?

A. I would not say it was particularly in the spring or fall, but I believe it was in the spring. It seems to me that it was in the spring; I can't tell exactly. We have rises in the fall sometimes.

155 Q. What did you have on board the steamer?

A. I don't recollect; I had groceries for my family; I suppose sugar and coffee, and maybe a barrel of flour and maybe a

590 barrel of salt; I don't know. I had groceries, as I come to town to get them. I never know what I have until I get home, make a bill of it, and get them to fill it.

156 Q. How long had the steamer Spottsville been running at that time?

A. Yountz was the man who run it.

157 Q. How old a boat was it?

A. I don't know; but when they sold her she was three or five years old or maybe two.

158 Q. She was a new boat when you went up there?

A. She had been running some time. Tatem had run her and then Yountz bought her. Tatem & Myers built her.

159 Q. Where was she built?

A. I think she was built up there by me on Green river, but I forget whether it was at Race creek or some place there. It seems to me she was built there; maybe she was built here, I don't know.

160 Q. Do you remember how you happened to take that steamer that time to go up home?

A. No, sir. Why, of course I wanted to go home.

And further the witness saith not.

(Signature waived.)

591 SAMUEL BUTLER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name?
A. Samuel Butler.
2 Q. What is your age?
A. I will in a few days be sixty-three years old.
3 Q. Where do you reside?
A. In the city of Evansville.
4 Q. Do you know Green River Island?
A. Yes, sir.
5 Q. How long have you known it?
A. I have known it, I reckon, fifty years.
6 Q. Have you lived near to it?
A. Right across the river and part of the time on it.
7 Q. At your earliest recollection was there or not a stream of water in the bayou at all times?
A. I think, as well as I can recollect, there was always a little stream running across. I know I have had to go up to the upper end and cross where I know the crossing—the lower end. I could jump my horse across a little spring of muddy water a few feet.
8 Q. That was at the head of the island?
A. That was at the head of the island.
592 9 Q. Has the bayou filled up much within your recollection?
A. Yes, sir.
10 Q. Can you give any estimate of the average fill?
A. That would be right hard to do. If I had some marks to go by—I would say from five to ten feet, anyhow.
11 Q. At your first acquaintance with the island were there any places where you could cross the bayou in low water?
A. Oh, yes, sir.
12 Q. How many were there of those places?
A. They were throwed-up logs—sort of what we call mud bridges.
13 Q. You say those were the only two places where it could be crossed?
A. Yes, sir; that is my recollection; then, as I remarked, at the head there.
14 Q. What was the width of the chute from bank to bank on an average?
A. I would suppose it was two hundred yards.
15 Q. What was the average depth of the slough?
A. Of the water from the level of the bank down?
16 Q. Yes, sir.
A. Well, it would hold from ten to twenty feet from the level of the bank.

593 17 Q. If you ever had any difficulty in crossing that slough at the head in an ordinary stage of water, tell when it was.

A. Well, I don't know as I ever had any at all in crossing at the head. I always knew when I could cross there and never went there any other time at the head.

18 Q. Was any crossing constructed at Garrett's place?

A. Yes, sir.

19 Q. What sort of crossing was that?

A. Well, as I remarked, logs thrown in and dirt and brush; what we called a mud bridge.

20 Q. Could that be crossed, say in 1861, as late as that, in an ordinary stage of water without any trouble?

A. Well, yes; it could. It was very muddy on this side and on the other, too. I crossed there in 1861, I think, along in April or May, probably in May, with a pair of mules, and we came very near getting mired in crossing. I had to lift my mule out.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

21 Q. What kind of crossings were those you speak of? Were they solid logs put down?

A. Well, sometimes they were and sometimes they had
594 thrown a little dirt on, and they were right muddy on top of the logs.

22 Q. Were they not intended to lay in the water there and for the water not to get through?

A. Oh, yes, sir; it was intended for the water to pass through below.

23 Q. They put dirt on top, did they?

A. Threw dirt on top—yes, sir; to hold the logs down.

24 Q. How did you become familiar with Green River Island?

A. I was raised a boy on the river and ran across, and had relations over there, and went over there every Sunday to meeting; was there on that side of the river as much as on the other on Sunday.

25 Q. Did you cross over on land all the season?

A. No, sir; had to cross on a skiff.

26 Q. Did you ever cross any other way than on dry land during summer?

A. No, sir; I have not, in the last few years. The last few years you could cross it most any place.

27 Q. Were there any places where you could have crossed in lowest water, except at these bridges?

A. Oh, I could have crossed.

28 Q. There were other places in times of lowest water in summer where you could have crossed, were there?

A. Oh, no; only at those crossings. There was some water,
595 and it was very miry all along everywhere. As a fellow said, it would pretty near mire a saddle blanket all along that bayou.

29 Q. When you say the chute was 200 yards wide, where are you reckoning from—where do you start from to take the sides?

A. Oh, I take it from the beginning.

30 Q. I mean do you begin at the county road on one side?

A. Yes, sir.

31 Q. And where do you reckon to on the other side?

A. Right on the highest bank on the other side.

32 Q. How wide was the bayou proper—that is, the bayou itself?

A. I reckon some place over a hundred feet.

33 Q. Was there any timber, at the time of your earliest recollection, between the county road and the bayou itself?

A. Yes, sir.

34 Q. What kind was it?

A. Sycamore.

35 Q. Were there any dead trees then?

A. Yes, sir; dead ones now and green ones.

36 Q. Were there any at that time?

A. I don't recollect at that time whether they were deadened or not.

596 37 Q. How large were the trees standing there between the bayou and the county road at the time you first became familiar with it?

A. Oh, three or four feet in diameter. You mean right on the——

38 Q. Between the bayou itself and the county road that runs along the side of the bayou?

A. Well, it was right along the back of the bayou what I am speaking of—close to the road. Some trees are standing there yet. I am not speaking about out in the bayou.

39 Q. The trees are not in what you speak of as the bayou; there are no trees in the channel of the bayou?

A. No, not in the channel of the bayou; but between the channel of the bayou and the county road.

40 Q. As I understand you, they were large trees?

A. Yes, sir.

41 Q. When you first knew the bayou how much water above low-water mark would it, in your opinion, have taken to make the water flow through the bayou?

A. That would be hard for me to tell; we did not have our gauges then to go by as we have now, and I never charged my memory with anything of the kind.

42 Q. You think the fill that has been made in the bayou is about five feet, if I understand you correctly?

A. From five to ten feet; maybe more in some places.

597 Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

43 Q. These trees that you spoke of in answer to Mr. Snow, were they growing on the top of the bank or down on the second bank?

A. They were growing on the top of the bank, right along the main road, and then in—well, a good many years afterward it

began to grow up with little cotton-woods—the second bank grew up with little cotton-woods and willows.

44 Q. How large are any of those cotton-woods now?

A. The largest of them?

45 Q. Yes, that have grown up there in your recollection.

A. I don't think there are any there; they are all cut down; the ground is all in corn.

Recross-examination.

Questions by A. H. SNOW, Esq.:

46 Q. What do you understand by the expression "first and second banks" of the bayou?

A. Well, the bank up a little higher, and then there is a place a little lower, and then another little rise.

47 Q. The second bank is the bank farthest away from the bayou, is it?

A. Yes, sir; the farthest away.

48 Q. The first bank is the bank in the bayou itself?

598 A. Yes, sir.

49 Q. You say the trees were growing on the first bank of the bayou itself—the bank of the bayou itself?

A. Yes, sir; on the first bank.

50 Q. On the bank of the bayou itself?

A. Yes, sir.

51 Q. And back from there to what you call the second bank?

A. The second bank down; yes, sir.

52 Q. How long have they been farming across there in the bayou itself?

A. Well, I could not tell you as to that; I have not been acquainted with it for ten or fifteen years, but for the last five years it has been in cultivation to my certain knowledge. But I have not been on the island—that is, to notice much about it—in the last five years.

Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

53 Q. Explain what you mean by the first and second banks of the bayou.

A. I mean this: they were up on top of the bank, and then there was a sort of a lower place next to the Indiana shore; then sort of out further in the bayou—towards the bayou—there was a little rise, a good deal higher than it is next to the bank; that is

599 what we call the second bank.

54 Q. The second bank, as I understand you, is next to the water in the bayou?

A. Why, yes, sir.

55 Q. The first bank is the Indiana shore, as I understand you?

A. Yes, sir.

56 Q. Next to the road?

A. Next to the road.

Mr. SNOW: That is just the reverse of what you said before.

57 Q. Were the trees growing on the bank close to the road or on the bank close to the water?

A. Close to the road.

Recross-examination.

Questions by A. H. SNOW, Esq.:

58 Q. Were there any trees growing between the road and the bank next to the water, next to the water?

A. Yes, sir.

59 Q. There was timber between the road and the bank next to the water?

A. Next to the water?

60 Q. Yes, sir.

A. No; not next to the water.

61 Q. Was there timber between the road and the bank of the bayou?

600 A. Right on top; right along on the edge of the bank by the Green River road; right along on the bank.

62 Q. There was timber there—we understand that?

A. Yes, sir.

63 Q. Was there any timber growing between the timber growing on the Green River road and the bayou itself?

A. No, sir. I said there were none a good many years ago, but since it began to fill up the willows and cotton-woods began to grow up there. They are now cut off, and it is in corn; but there are some now right along the water's edge.

64 Q. Those along the water's edge were not there at the time you first knew it?

A. No, sir.

65 Q. Are you speaking of the whole length of the bayou now?

A. Yes, sir.

66 Q. What was between the county road and the bank next to the water—what growth was there there?

A. The sycamore?

67 Q. No; between the county road and the bank next to the water—what growth was there in there?

A. I can't understand you.

601 68 Q. The county road is some distance from the bayou itself, is it not?

A. In some places it is.

69 Q. And some places it is not?

A. Yes, sir.

70 Q. Those places are what I am speaking of. What was the growth or vegetation in those places between the water or the bayou and the county road?

A. Well, I told you—these big trees and sycamores.

71 Q. No; you say those trees were on the road itself.

A. Well, right on the road. They are on the road, and they are no other place but on the road.

72 Q. You mean on the road?

A. Along the side of the road and right along the side of the bank.

73 Q. Was that swampy land in between there or was it brushy, or what was it then?

A. Some parts were and some parts were not. There was some very clear places—clear of brush or anything.

74 Q. But the bayou itself, you have stated, was about one hundred feet wide in the widest part?

A. Well, I say probably it would be that—just the bayou itself. I didn't suppose you meant from bank to bank.

75 Q. I mean what you are speaking of as the bayou—what you call the bayou.

602 A. Well, if you go from bank to bank, I will answer two hundred yards, but then the water did not stand the greatest part of the year; I would say, maybe, one hundred or, maybe, one hundred and fifty feet wide.

And further the witness saith not.
(Signature waived.)

LEMUEL STANSBERRY, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name?

A. Lemuel Stansberry.

2 Q. How old are you, Mr. Stansberry?

A. Fifty-eight years old the 7th day of last April.

3 Q. Where do you live?

A. I am living now in Vanderburgh county, in Knight township.

4 Q. How long have you lived where you do now?

A. Ever since about the first of last January. I burned down in January, and I got a house to live in down there, and I have been living there ever since.

5 Q. Where was your home before that time?

A. On Green River Island.

603 6 Q. How long have you lived on and about Green River Island?

A. I have lived there for fifty years and probably more.

7 Q. At your earliest recollection, what was the condition of that bayou as to the water in it?

A. To my best recollection, in my early days I think the water was running in my boyhood. I lived at the lower end of the island probably the most. I never lived up as far as the head until

I got up to be pretty well grown. I lived with my brother along about the Aidelott place and this side of the Aidelott place until he bought ground on Green River Island, and then I became more acquainted with the head of the island, and I was there more or less ever since in the fall and spring, and, as far as I know about it in my boyhood, at the mouth I never saw it dry when I was a boy; it ran through all seasons through. I never seen it but what the water ran out at the mouth. Whether it was running in at the head or not I would not say positive as to that, but certainly it was running out at the mouth.

8 Q. What was the average width of that bayou?

A. From main bank to main bank?

9 Q. Yes, sir.

A. I would say from a hundred and fifty to two hundred
604 yards wide.

10 Q. What was the average width of the water in it?

A. It was something near the same width at a common stage of water.

11 Q. What was the average depth of water in that bayou?

A. I would probably think in my boyhood it would be some thirty feet deep, to the best of my recollection.

12 Q. At your earliest recollection were there any places where it could be crossed; and, if so, how?

A. There was a bridge or two—mud bridge built across the bayou for crossings, and it was very hard to cross at that. When the water would be high and would go down it would leave a terrible sediment and a person could hardly get to the bridge with a wagon and team; an empty wagon with a strong team could hardly get to it or cross it with an empty wagon; many teams mired there; I saw many teams mired there and leave the wagon; team and men left them sticking in the mud.

13 Q. How was the slough generally crossed?

A. They would generally cross with canoes; sometimes we would have a little boat, a little ferry-boat; I used to have one there myself that I crossed in; while Henry Angel was living there him and me bought a litte ferry-boat in partnership.

605 14 Q. About what time was that?

A. That has been, I reckon, about sixteen or seventeen years ago, to the best of my knowledge; maybe a little longer; I never kept any account.

15 Q. What was the condition of the first or outside banks of that bayou at your earliest recollection?

A. That was next to the road, do you mean?

16 Q. Yes, sir.

A. It was growed up in timber considerably; pretty thick, heavy timber on each side.

17 Q. Were the banks sloping or abrupt?

A. Why, they were sloping.

18 Q. How did they then compare with their state now?

A. I don't know as I can see a great deal of change; they were sloping then and are somewhat sloping now, only they are filled up,

part of the main body of the bayou, until it is nearly evening up with the main-land.

19 Q. About how much has that bayou filled up, in your recollection?

A. It must have filled up all of fifteen feet or more, and I think more than that. I could give you some reasons.

20 Q. Do you remember anything of Dr. Yates building a crossing on that bayou?

A. Yes, sir.

606 21 Q. State as nearly as you can when that was done.

A. Several years ago; I never put my memory to what date or anything about that.

22 Q. Tell how that was made.

A. He put in some posts there and anchored them down, and then boxed it up, and then put pickets on top of that, and had some kind of an arrangement fixed there for him to walk across and, I think, to lead his horse in high-water time, so that he could walk across and lead his horse across—have him swim across, to my best recollection.

23 Q. Where was it?

A. Right at the head of the island.

24 Q. How high were those boxes with the picket fence on top of them from the surface of the ground to the top of the pickets?

A. From the surface, if I understand you—it was across the slough, and shall we say that would be the surface there (indicating)?

25 Q. Here where the boxes rest on the ground, on the surface, to the top of the pickets.

A. It must have been some six or eight feet from the surface; probably it might have been more. I would not be very positive from the surface; I never noticed from the surface. I couldn't hardly tell you; from the surface, from the boxes, I couldn't

607 hardly tell you how it would be from the surface. If I could understand where the surface was; do you mean from the bottom of the slough where the bridge was built across—from that surface?

26 Q. Yes, sir.

A. Then it would be, I suppose, ten or twelve feet.

27 Q. What became of that picket fence?

A. I think it is covered over with dirt there.

28 Q. How deep, in your judgment, is the top of that fence below the present surface of the bayou?

A. Let me understand what you say and mean now.

29 Q. I will ask you — that representing the picket (illustrating)?

A. Yes, sir.

30 Q. Now I ask you how far, in your judgment, is it from the top of this picket to the present surface of the bayou; how much has it been filled up above the top of that picket?

A. I think it is all of fifteen feet or more.

31 Q. Have you known of steamboats going through that bayou in the last twenty years?

A. I have seen steamboats going through there; yes, sir.

32 Q. Have you been through there with steamboats or on a steamboat?

A. Yes, sir.

33 Q. In the last few years?

608 A. I think about five years ago. A steamboat took a barge up there for me and left it until I loaded it and went on out, and then about the second day she came back and got it and run it out at the head of it.

34 Q. Did that steamboat or not actually go through the bayou from one end to the other?

A. Oh, yes, sir. Well, she did when she came after the barge. I am not sure whether she came up through that time or not, but I mind that she did when she brought the barge up. She brought her up through the bayou, but I have my doubts whether she came up through the bayou to get it or not, but I recollect she was to take it right on through and right out at the head. I think she came out through the head, out of the mouth of Green river, and then came down and took my barge out at the head and went on down to Evansville.

35 Q. Was the water at that time over the banks or not?

A. The main bank of the island was out and the main bank on the Indiana side was out.

36 Q. Do you own land on the island?

A. Yes, sir.

37 Q. How much?

A. One hundred acres.

38 Q. About what part of the island is it?

609 A. It is adjoining the McClain and opposite the tow-head, if you know where that is. It is about a mile from the head or probably a mile and a quarter, or something like that. It adjoins Colonel McClain's property.

39 Q. From whom did you acquire that land?

A. From Austin Phillips' heirs, sixty acres of it.

40 Q. Do you know from whom they got it?

A. Levi Jones.

41 Q. Do you know from whom he got it or who he represented?

A. I don't know that; I was quite a youth when he dispossessed the island, or the people off of the island where they would not give him recompense. He would just take the people and put them in the wagon and haul them off and put them on the Indiana shore.

42 Q. Was there any officer with Jones when he did that?

A. Well, I could not say for certain whether there was or not. I was quite a young lad, and I could not say whether he had any officer with him or not. There were a good many of them together, I know that.

43 Q. Were you acquainted with Corydon Garrett?

A. Yes, sir; I have known him from the time I was born, almost up until he died.

610 44 Q. Do you know Wilber Stansbury?

A. Yes, sir; very well.

45 Q. Do you remember a Corydon Garrett conveying Wilber Stansbury any land on the island?

A. Yes, sir.

46 Q. Did Corydon Garrett at that time own land on the Indiana shore opposite his land on the island?

A. Yes, sir; the biggest part of the way. I think there was a portion that he did not. I do not know, but I rather think there was a small portion of the lower ground that he did not own.

47 Q. To what place did he convey land to Wilber Stansbury?

A. What is that?

48 Q. To what line did he convey land to Wilber Stansbury?

A. To the Indiana line.

49 Q. Do you mean the line as it then extended on top of the Indiana bank?

A. Yes, sir.

50 Q. Did he or not surrender possession of that land to his vendee, Wilber Stansbury?

A. Yes, sir; I think he did. The Mulberry Corner, right at the school-house, standing along the road, was one corner.

51 Q. How long since was the bayou along your land first cultivated?

611 A. About twelve or thirteen years ago. I cleared the flat out myself, and put it in cultivation.

52 Q. Is all of the bayou on your land now cultivated?

A. Yes, sir; except just a little strip right in the main stream that is grown up in willows, where there is a road now, and that is a little water hollow.

53 Q. How long since all of the bayou on your place which has been cultivated was first cultivated?

A. I think it has been about twelve or thirteen years since I first put it in.

54 Q. Did you put all of the bayou in then?

A. No, sir; not all at one time—a part.

55 Q. How long is it since you cleared up the last of it?

A. The last of it has been cleared for about four or five years.

56 Q. Up to four or five years ago was it in water or was it so that it could be cultivated?

A. Only one portion of it, and that was a little narrow strip right close to the main road; that has been cultivated for three years; that was never cultivated until three years ago.

57 Q. I will ask you to look at the map marked Exhibit "C."

A. I can't tell you much about that. I will look at it and I give you all the information I can, and that is all I can say. I

612 know nothing about the map or anything on it.

58 Q. Did the road always run as now laid down on that map, and if not how did it formerly run?

A. In my boyhood it did not run in that shape at all—that is, along at the head of the island.

59 Q. Tell where it did run.

A. Is this the Aiken's line here (indicating on Exhibit "C")?

60 Q. Yes, sir.

A. It ran in this shape (indicating).

61 Q. You mean it ran from about opposite Buck Island, nearly straight to the Aiken line?

A. Yes, sir; very nearly straight, bearing a very little toward the river.

72 Q. Bearing a little until you reached the Aiken's line?

A. Yes, sir.

63 Q. And then how did it run?

A. Ran out to the main river bank and up and down the Ohio.

64 Q. What do you mean by the Aiken's line?

A. Where this line was between the Garrett farm and Mr. Aiken's. That is what I wanted to know.

65 Q. On this map to that line is representing section 15?

A. Yes, sir.

66 Q. Beyond that line is section 14. Now, to what line
613 did the Aiken's line of which you speak come?

A. Well, the way I look at it, to this line (indicating on the map), whatever line it might be—the Aiken's line, or whatever line you might call it.

67 Q. On the map that is the section line between sections 14 and 15?

A. Yes, sir; this road ran, as I told you, to the section line between sections 14 and 15.

68 Q. And then you say it ran to the river?

A. Ran to the river—a very short distance from here to the river; only a few steps.

69 Q. How far was the old road from what was known as the State line in your boyhood?

A. My understanding was that the State line always run about along on the edge of the road.

70 Q. How much land is there between the line of the old road and the river down about the head of Green River Island?

A. To the best of my recollection—I never ran over it or looked particularly at it—some eight or ten acres; might be more and might be less; I can't say positive, because I never measured it. There might be more land than that, but, just at a rough guess, I would say eight or ten acres.

71 Q. Do you remember when that land was farmed and how?

A. That piece you just spoke about?

614 72 Q. Yes, sir.

A. I remember about it, but then the date I couldn't tell for my life. I remember just how it laid in my boyhood just as well as if it was yesterday.

73 Q. Please describe how it laid at your first recollection.

A. There was a road running up to this line that we spoke about and to the right of that, between that and the main river bank, was a pond of water that stood there the year around; and there were some few trees growing around it; some shrubbery growed up in it, and there was one large cotton-wood tree stood about half way of

this pool of water, right along the edge of the road; I suppose it was four feet through or more. Well, that would mire most any animal that would get into it at nearly any season of the year; right in where that corn-field is now, when I was a boy, if you would drive a horse in there or ride one in or a yoke of oxen went in there it was mired and liable to stay in there.

74 Q. Was the mouth of the bayou then higher than it is now—higher up the river?

A. It seems to me like it was further up the river than what it is at present. I think it has been cutting off and filling in, and it is further down the river than it used to be.

75 Q. What do you mean has been cutting off?

615 A. It has been gradually cutting off the bank lower down and washing there and filling up in behind, and it is made down lower now than it was in my boyhood.

76 Q. Do you mean it has been washing off the end of the island?

A. No; I mean washing off the main bank of the river and cutting off lower down the river; say cutting off this here (indicating) and this here (indicating), down farther, and maybe it is here farther down, and filled in right behind where it was cutting off, is what I mean. I think the head of the bayou, the main channel, is down the river some distance from where it used to be when I was a boy, but the distance I could not say. I couldn't name it and no use to talk about it.

77 Q. How has it gotten down the river?

A. By kind of cutting out and washing down by the drifts or something or other causing it. I could not say what has caused it, but I am positive the main mouth of the bayou is not up the river quite so far as it used to be.

78 Q. Then has not the head of the island been gradually cutting away?

A. Somewhat; yes, sir.

616 79 Q. On which side of Buck Island was the main channel of the bayou when you first knew it?

A. Next to the Indiana shore.

80 Q. Have you any recollection of any crossing being made at the foot of that pond so that you could reach the river?

A. Crossing made at the foot of Buck Island, do you mean?

81 Q. No; of the pond you spoke of above there, so that you could get to the river from the road?

A. No, sir; I have no remembrance of that at the present time.

82 Q. When did you first hear any claim that the State line was not on the Indiana bank of the bayou?

A. When did I first hear of that?

83 Q. Yes, sir.

A. Well, I could not hardly say if ever I heard of it, only by some young men that did it to be smart.

84 Q. State your best recollection of how long it was since you first heard that claim.

A. It has not been more than a couple or three years, anyhow, I heard them talking about it. I think it was all a hoax.

85 Q. Where was it then claimed that the line was by those persons?

A. They wanted to make the claim that it was down to
617 the middle line of the channel. That is what they were talking.

86 Q. What State has always exercised jurisdiction and control over the island and bayou?

A. Kentucky.

87 Q. Do you mean that it has exercised jurisdiction up to the top of the Indiana bank?

A. I think so.

88 Q. Where have you always voted and paid taxes when living on the island?

A. In Henderson.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

89 Q. How wide was the bayou at the time you first knew it, the bayou itself?

A. It must have been over one hundred and seventy-five—close to two hundred yards wide.

90 Q. What the people speak of as the bayou, I mean?

A. That is what I speak of.

91 Q. No; I mean what the people generally call the bayou; how wide was that?

A. One hundred and seventy-five or two hundred yards wide.

92 Q. When you say it was one hundred and seventy-five to two hundred yards wide you reckon from the county road on one side to the high ridge on the island side, do you not?

618 A. Yes, sir; from the edge of the bank; not the top of the bank, but kind of to the bottom of the main bank.

93 Q. How wide was the place where the water generally stood at that time?

A. Well, it was filled up so fast that I couldn't tell you hardly the width of the main channel at that time.

94 Q. How large do you think it was?

A. I will say, for instance, probably seventy-five yards wide.

95 Q. At the widest part?

A. Well, yes; probably might be further than that and maybe not quite so much.

96 Q. What was the condition of the bayou channel, when you first knew it, in the summer at the time of lowest water?

A. Of the Ohio river?

97 Q. Yes, sir; when the water was lowest in the river what was the condition of the bayou?

A. You mean coming in at the head?

98 Q. No; I mean coming right along there—the whole bayou; what was the condition of the whole bayou, when the water was lowest in the Ohio river, when you first knew the bayou?

A. In my earliest day there was water in that bayou all
619 the year round.

99 Q. Was the water standing in pools?

A. Well, there was some crossings, some few crossings, at very low-water mark.

100 Q. There were some crossings at very low-water mark?

A. Yes, sir; and tolerably bad crossings at that.

101 Q. Then the water did stand in pools at low-water mark when you first knew it?

A. Well, I don't know when I was a boy that I know of any bridge being across it at all. I don't know of any bridge being across it when I was a small boy.

102 Q. Did you never cross it, when you were a boy, on foot?

A. I don't think I did.

103 Q. Where did you live when you were a boy?

A. I lived from two miles and a half above Evansville to the head of the island, right on the bayou—right along the bayou bank?

104 Q. Was that near the head of the bayou or nearest to the mouth?

A. Nearest to the mouth—that is, until I was up to about sixteen or seventeen years old.

105 Q. Then you had no occasion to cross it except near the mouth?

A. No; we had canoes and skiffs and the like of that
620 when we wanted to cross.

106 Q. But you crossed at the mouth—more at the foot of the bayou—the end up next to Evansville?

A. Sometimes we would cross there, but if we did we would have to cross in a canoe or skiff. Amongst our neighbors where we lived when we would have to cross we nearly always had a canoe or skiff, and we would hollow over and one would set the other across.

107 Q. When you did cross in a canoe or skiff you were crossing at the lower end of the bayou, were you not?

A. Not right at the lower end; a mile or a mile and a half or two miles above the lower end—say two miles above the mouth.

108 Q. When you say the average depth of the bayou was thirty feet, what do you mean?

A. At a common stage of water.

109 Q. Did you ever measure it?

A. Never put the rule to it, but I have fished in the bayou a great deal, when I was a boy, in a common stage of water, and I could tell a good deal by my fishing. That is one way I have of knowing it.

110 Q. In what seasons of the year did you fish there when you thought it was thirty feet deep?

A. I have fished in the summer season and the spring season.

621 111 Q. Then, in the summer season, these pools you speak of you think were thirty feet deep?

A. No; not right in the latter part of the summer season they were not that deep.

112 Q. How deep were they then?

A. Some of them might have been four or five feet deep and some might have been ten.

113 Q. Yet, in an ordinary stage of water, they would have been thirty feet deep?

A. Yes, sir.

114 Q. Then an ordinary stage of water would have been twenty feet above low-water mark?

A. Well, I think it was thirty feet.

115 Q. I mean if at the lowest stage of water the greatest depth in the bayou was four or five feet and yet the average depth at an ordinary stage of water was thirty feet, it makes your ordinary stage of water twenty-five feet, does it not?

A. Well, I was meaning at those crossings, the highest part of the land at these crossings; but right in the main pools there are holes of water there I suppose are five feet deep right now.

116 Q. You don't think there are any more than ten feet?

A. No, not now.

117 Q. Were there any there, then, in the middle of the summer?

A. Oh, yes, sir.

622 118 Q. How deep were they?

A. Must have been ten feet or more.

119 Q. At what season of the year did you see teams get mired at the crossing; did you ever see them get mired in the middle of the summer?

A. Yes, sir.

120 Q. Do you remember the circumstances of any or not?

A. No, sir; I could not tell you all, but I have seen them mired times and again.

121 Q. But do you know of teams getting mired in summer?

A. Yes, sir.

122 Q. That was in crossing at places that were not regular crossings?

A. In the spring of the year and the summer they would mire in the crossings.

123 Q. How do you know that this picket fence you speak of was covered up at all?

A. I am very positive of it.

124 Q. How are you positive of it?

A. I saw it when it was very nearly covered up; it would be hard to get away without covering the rest of it.

125 Q. How much do you say that was covered up now above the top of the pickets?

A. I said probably some three or four feet, or two or three
623 feet; I can't tell. You just have to guess at it. I said it must have been some ten or twelve feet from the surface to the top of those pickets.

126 Q. How nearly covered up was it when you saw that picket fence last, and what was it covered with?

A. With sand.

127 Q. How nearly covered up was it?

A. I reckon there was about a foot and a half out.

128 Q. What season of the year did you see it in this condition?

A. I think it was in the fall of the year when I saw it in passing. It was not often that I passed through that way there.

129 Q. If I understood you, you said that the top of this picket fence was twelve to fifteen feet above the surface of the ground; how do you know that?

A. I am very positive of it—that is, from the main channel right under where this bridge was built to the top of it—to the top of the pickets. I am positive it was that high.

130 Q. How long did that picket fence stand there before it got covered up?

A. It stood several years. If I knew exactly what year it was put there I could come nearer telling you.

131 Q. Was it covered up entirely?

A. Yes, sir.

624 132 Q. You saw it when it was covered over and over?

A. I saw it when it was filled in more and more every year.

133 Q. What was this bridge or this picket fence and boxes built from? How long was it?

A. I reckon about sixteen feet long; sixteen or eighteen, probably.

134 Q. And what was it built from?

A. Why, it was built on posts.

135 Q. No; I mean what was it built across?

A. It was built across the head of the water there—the head of the bayou there; the mouth of the head; whichever you might — to term it.

136 Q. Then the head of the bayou was sixteen feet wide at that time?

A. Well, it was hardly sixteen feet when that bridge was built. It was just a little place washed out backwards and forwards, and kept people from crossing there, but I don't think it was that wide. The channel itself was not that wide—sixteen feet. Probably it was about that wide, but I think a man could run a dam across it.

137 Q. That was the mouth of the bayou?

A. That was what I would call the head.

138 Q. The head of the bayou?

A. Yes, sir.

625 149 Q. What year was it when it was sixteen feet wide at the head?

A. It was years after that that washed and filled up, and then the water ran both ways—ran in the bayou and then ran out and cut a channel, making a little channel there.

150 Q. What seasons of the year did they use this bridge?

A. The spring of the year, when the water was up high, to get to town and backwards and forwards.

151 Q. Did you ever see this bridge under water, or could they cross it in high water at any time?

A. No, sir; they could not cross it at all times; it would come clear over it.

152 Q. Why didn't the bridge wash away?

A. He had it anchored there to make it safe is all I could see.

153 Q. How wide across was this bridge? I do not mean its length.

A. I couldn't hardly say because I never took any measure; I just merely passed.

154 Q. Was it a foot-bridge?

A. It was wider than that.

155 Q. Could he take a wagon across it?

A. I think so. It was eight or ten feet, I think, probably.

156 Q. Piers were made in boxes?

626 A. They put in posts and then the boxes were put on.

157 Q. How large were the posts?

A. They must have been over a foot thick — square.

158 Q. How large were the pickets?

A. The pickets were about three or four inches wide, five or six feet long, something like that.

159 Q. Were the pickets all standing when you saw it?

A. The biggest portion was. I think some of them had been broken off.

160 Q. You never saw the water flowing through that very fast, did you?

A. No, sir; because I was not very frequently there; I was not very often there.

161 Q. What year did you say you went through the bayou when you saw a steamer go through the bayou?

A. I said about five years ago, when they went up for me and took a barge-load of corn out for me.

162 Q. That was in 1883, was it?

A. Something like that; I never put any dates down. I guess the book will show what time it was.

163 Q. What season of the year was it?

A. It was in the spring of the year likely, or the latter part of winter.

164 Q. How large a steamer was it?

A. I could hardly tell the size.

165 Q. What kind of a boat was it?

627 A. A pretty good little Green river boat.

166 Q. Was it fifty feet long?

A. It was longer than that.

167 Q. Did the steamer go up there during the flood of 1883, if you can remember; I mean was that the time you refer to, the flood of 1883?

A. Why, yes, sir; it went through there often. What year was this big flood—1884?

Mr. KUMLER: The high water of 1884 was just six inches higher than that of 1883.

The Witness (resuming): Well, in 1884 they went through there very often, but it was very high.

168 Q. Were the bottom lands overflowed at the time this steamer went through?

A. That I first spoke about—at the time I took the corn out?

169 Q. Yes, sir.

A. No, sir; not altogether; the bayou ridges were out and the State-line road was out.

170 Q. Were the bottom lands by the road on the Indiana side overflowed?

A. Yes, sir; somewhat overflowed the sloughs were.

171 Q. When was it that Mr. Jones dispossessed the people on the island?

A. It must have been over fifty years ago and more; I
628 could not tell you the date; I am no scholar, and never put anything of that kind down.

172 Q. I understood you to say that when Mr. Jones dispossessed the people on the island he took their goods and hauled them across to the Indiana shore.

A. Yes, sir.

173 Q. How could he haul across the bayou?

A. He just took them to the bayou, I suppose, and ferried them across some way.

174 Q. You meant to say that he ferried them across?

A. Just ferried them, I think; hauled them to the bayou and put them across by ferry-boats or something of the kind and got them onto the Indiana shore. I think they had skiffs and one thing and another, and just probably lashed a couple together and ferried them across. To the best of my memory he done it with skiffs. Let me tell you why I think so. Somebody stole his wagon wheels and run them right into the bayou at the main crossing and he never did get them—right where the main crossing is. I know the water must have been so that they could not cross with wagons.

175 Q. You have spoken about the pond opposite the head of the island or near the head of Green River Island.

A. Yes, sir.

629 176 Q. Where was that pond?

A. It was just a little above Buck Island.

177 Q. What do you call Buck Island?

A. Buck Island lays there in the bayou, with a little channel around each side of it; what is called Buck Island. They killed a buck on it some time. It is a little island that formed there with a little channel on each side of it.

178 Q. What do you mean by channel?

A. Where the water has gotten around it and left a little island there.

179 Q. Do you mean to say that there was any water there in the summer when you first knew the bayou?

A. Yes, sir.

180 Q. Was it standing water or running water?

A. Running water, the principal part of the time, and standing water, too.

181 Q. Was it standing water in summer around what you call Buck Island?

A. Standing water; yes, sir.

182 Q. Where did this pond that you speak of lay with reference to Buck Island?

A. Lay right across from it: just across the main road that ran to the river. The road used to run right out this way (indicating); now it turns and goes out to the river and goes up the river.

630 It used to go quartering to this line, and this pond was in between that and the river bank on the right from the road, in below Aiken's land.

183 Q. Was this channel, which you said was on the further side of Buck Island, this side towards Evansville of that pond, or how did it run?

A. Oh, there was a roadway above this pond that is right in the main pool now. There is a road running out around where this place is now. It is good, tenable land. Buck Island lies in here (indicating). It is all filled in now—probably all the Indiana side is all filled in now level with the Indiana bank, which used to be the main channel. Now it is pretty nearly filled-up level, so that it would be tenable probably. The channel washed out the lower side next to the Kentucky side.

184 Q. When you first knew the Green River Island bayou was there one or two mouths of the bayou that went into the river, as you say?

A. There was one right there (indicating), and then it wasn't but a little piece until it ran around a little island, making two, you might say. It was only a short distance until it formed Buck Island, and then the water ran around it each way.

185 Q. When you first knew it, in summer and in times of lowest water, was there any water around Buck Island at all in those channels?

631 A. I think there was; but I was not up in that place very often. My farm business was down towards Evansville, and I hardly ever went up in that direction nor up the bayou unless I went on some business or something. My business was towards Evansville and not up that way.

186 Q. In your opinion, judging from what you saw of the rest of the bayou, would there, in times of lowest water, be any water standing around Buck Island?

A. Yes, sir.

187 Q. Would it stand in pools?

A. Yes, sir.

188 Q. Just as it would along the bayou?

A. Yes, sir.

189 Q. How much water would it, in your opinion, have taken, at the time you first knew Buck Island, to make the water flow through the bayou? How much water would it take above low-water mark?

A. I think six feet in the channel of the Ohio river would put it through there, to my best recollection.

190 Q. Why do you think so?

A. Because the mouth of the bayou was so much lower than it is now.

191 Q. How much lower do you think the mouth of the bayou was then than it is now?

A. Twelve feet, anyhow; probably more—fourteen. There
632 is a flat bar there—nothing but a flat bar—and it would not take but a very little water to run over that bar. A few inches will run over it.

192 Q. What do you understand by the expression "Kentucky exercises sovereignty and jurisdiction over Green River Island?"

A. I didn't understand that.

193 Q. The question was asked you on your direct examination, What State had always exercised sovereignty and jurisdiction over Green River Island? and you answered "The State of Kentucky."

A. Yes, sir.

194 Q. What do you understand by that?

A. What I understand is that it was always talked of and always understood to be Kentucky to a certain line.

195 Q. But whether the State of Kentucky exercised jurisdiction and sovereignty over Green River Island do you know or not?

A. I could not say much about that; no.

Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

196 Q. Did the State of Kentucky levy and collect taxes on Green River Island?

A. Yes, sir. If I understand what a man means by a question I will answer it. I will try and understand it; but I am not educated.

197 Q. Did you ever know anybody to be indicted in the
633 State of Kentucky for any offense committed on the island?

A. I don't remember that I did.

198 Q. Do you know of any attachments, summons, or warrants of arrest being executed or levied upon persons upon the island or upon their property?

A. Yes, sir.

199 Q. Was any question ever made of the right of Kentucky courts to issue such processes?

A. Yes, sir.

200 Q. Who raised the question?

A. Dr. Yates.

201 Q. The courts of Kentucky, I say.

A. Yes, sir; this State of Kentucky.

202 Q. My question is, did anybody ever dispute the right of Kentucky or the courts of Kentucky to issue the attachments or warrants of arrest to be executed on Green River Island?

A. No, sir; not that I ever knew of; not to my knowledge.

203 Q. I understood you to say that residents of Green River Island always voted at Henderson, in the State of Kentucky.

A. Yes, sir.

204 Q. Here is the section line on this map (referring to
634 Exhibit "Z") between sections 14 and 15. The Aikens place is said to be down in this corner of section 14. This line is marked (road). Now, does this road as put down on this map, from here to there (indicating), the dotted line through sections 10 and 15 to the section line between 15 and 14—does that represent correctly the way the road ran as it was some 30 years ago?

A. To the best of my knowledge, that represents it about as well as I could imagine it was.

Recross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

205 Q. Do you know where the section line between sections 14 and 15 is?

A. I hardly know.

206 Q. Do you know where this dotted line would come, the dotted line midway of sections 10 and 15 would come, on the county road?

A. No, sir; I am not acquainted with that.

207 Q. Then how do you know that this road between the dotted line midway of sections 10 and 15 to the section line between sections 14 and 15—how do you know that this road lying between those two lines is or is not a correct representation as the road used to run?

A. I could tell where the changes were made there, where
635 it ran out to the river and where it used to run straight along.

208 Q. But I understood you to say where the section line between sections 14 and 15 come on the line near Green River Island?

A. Well, I know something about it; of course I know something about it. I never paid much attention to the lines.

209 Q. When you said that the State of Kentucky had always levied and assessed taxes against the residents of Green River Island, do you mean any more than that the residents of Green River Island had paid taxes in Kentucky? Do you know anything about the State of Kentucky ever assessing taxes against the residents of Green River Island?

A. No; I don't know as I do.

210 Q. Do you mean anything more than that people who lived on Green River Island paid their taxes in Kentucky?

A. No, sir; that is about what I mean.

211 Q. Where did the children on Green River Island go to school?

A. Went in Indiana, but had to pay for it.

212 Q. To whom did they pay for going to school?

A. Paid to the township—to the trustee.

213 Q. What do you mean by saying that they had to pay for it?

636 A. They would not allow them to go to school without, when they lived out of the State, and that is the reason.

And further the witness saith not.
(Signature waived.)

Whereupon, at the hour of 5 o'clock p. m., the further taking of these depositions was adjourned until to-morrow, Wednesday, September 12th, 1888, at 9.30 o'clock a. m.

WEDNESDAY, *September 12th*, 1888—9.30 o'clock a. m.

The parties met pursuant to adjournment.
Present: The same as on yesterday.
The taking of the depositions was resumed as follows:

WILLIAM L. STANSBERRY, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, testified as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name?
A. William L. Stansberry.
2 Q. What is your age?
A. I will be forty-five years old next month.
3 Q. Where do you live?
637 A. I live on Green River Island.
4 Q. How long have you known that island?
A. Ever since I have been large enough to know anything. I was born about two miles from the city here and lived along it all my life.
5 Q. How far have you lived from the bayou between Green River Island and the State of Indiana?
A. Well, just across the bayou—only for four years; I have lived in the city the last four years, and that is the only time I have been away from there. I lived on the island pretty much near all my life.
6 Q. As far back as you can remember, what was the condition of that bayou, as to water in it?
A. There seemed to be water in it most all the year round, and muddy—a kind of water draining through all the time. We used to have bridges there to cross. I lived pretty well up to the upper part of it. They had a bridge there at what we call the Garrett place.
7 Q. Was there or not any stream running throught that bayou—running out from it?
A. Yes, sir; there was a stream at all those fords, running, I think, the year around, as well as I can recollect—running through—a small stream—that is, down below the head, from there on down along there where I lived; and along those crossings we
638 always had to throw in rails or something, at the dry spaces, to get across.

8 Q. Was that or not its condition in low water in the Ohio river?

A. Yes, sir; it seemed to be running that way all through the summer.

9 Q. Have you any knowledge of any crossing having been made by Dr. Yates near the head of the bayou?

A. Yes, sir.

10 Q. About how long since was that made?

A. I don't remember how long ago it has been. It has been about fifteen or sixteen years ago, I guess, somewhere, to the best of my knowledge, as well as I can recollect.

11 Q. Did you see that crossing made?

A. Yes, sir; I was there when he was making it, off and on.

12 Q. What became of that crossing?

A. It is covered up.

14 Q. How?

A. By the deposit of sand making there.

15 Q. What did that crossing consist of?

A. Well, he just went to work—there was a slough in there, a deep slough, and he went to work and boxed that slough up; he made a kind of a cover or bridge and boxed it all up, and
639 then went to work and put the fence in on top of it; he put in some long posts and fixed boxes to those posts and then attached a fence to the posts on top of them.

16 Q. What sort of a fence was that?

A. What we call a picket fence.

17 Q. About how high was that fence?

A. I think six-feet pickets were on that.

18 Q. You say that has all been covered up with a deposit of sand?

A. Yes, sir.

19 Q. How deep do you suppose it would be from the present surface of the ground to the top of that fence?

A. I don't know. I guess it would be three or four feet down to that now, maybe probably more.

20 Q. Did you or not observe that fence or crossing as it was being covered up?

A. Yes, sir; I saw the pickets when the top of them was not more than six or eight inches out of the top of the ground.

21 Q. At your first recollection, how many crossings were there from the Indiana shore to the island across the bayou, and where were they?

A. Well, I never knew particularly them to cross only but the one.

22 Q. Where was that?

640 A. That was at the Garrett place. I lived up towards the upper part of the island at that time. Then when I lived down towards the lower end of the island I was small, and never had any crossing to do down there.

23 Q. Where was the Garrett place?

A. It was right opposite the old Jesse Lane farm.

24 Q. Just explain near what end of the island that was—near the upper or lower end or near the middle.

A. Near the upper end.

25 Q. Do you know where the school-house on the Indiana bank was?

A. Yes, sir.

26 Q. How near to that was the Garrett crossing that you speak of?

A. It was a little below that, to my recollection.

27 Q. Do you know of any other fences or crossings that have been covered up?

A. Well, I had a fence on that second bank there—what they called that second plat of the bayou. I have posts there now that are plumb covered up—nine-foot posts—that I used to have a plank fence on.

28 Q. When did you make that fence?

A. It has been about thirteen years ago—thirteen or fourteen—and the posts are now covered up. That is on the second bank; it is not down in the main channel.

641 29 Q. How high above the bottom of the channel of the bayou was that fence of yours, in your judgment—the top of your fence?

A. From the bayou to where the fence was?

30 Q. No; from the bottom of the channel of the bayou. You say you came up on the second bank and made your fence?

A. Yes, sir.

31 Q. Now, how far was it from the top of your fence to the bottom of the channel of the bayou?

A. I have no idea how far it was. I guess it must have been sixteen or seventeen feet—somewhere along there.

32 Q. It was sixteen or seventeen feet?

A. The bayou at that time was pretty deep right in the main channel.

33 Q. How far below the head of the island was this fence you speak of that you made?

A. It was about three-quarters of a mile, I reckon.

34 Q. What is the average distance between the first banks of the bayou, from the top of the bank on one side to the top of the bank on the other?

A. I think it would average 200 yards all the way through; anyhow that, and probably more in places.

35 Q. Has there or not been any change in the appearance of the first banks, in your recollection?

642 A. Well none, only it has been filling up and the banks are getting lower on account of the other land filling up to them.

36 Q. Are those banks as abrupt now as they were formerly?

A. No, they do not look so abrupt. They have been ploughed and worked down some and washed out.

37 Q. The bayou has filled up until the grade upon the top of

the bank is—is it considerably less now than it was at your first recollection?

A. Yes, sir; at places there is not much bank along there; it is getting filled up.

38 Q. Were you in your childhood acquainted with the road opposite the head of the island and above it?

A. Yes, sir; I lived right there when I was a boy.

39 Q. Did the road at your earliest recollections run as it now does, turning abruptly to the right near the head of the island?

A. No sir.

40 Q. How did it run at your earliest recollection?

A. It ran straight right ahead; it didn't make that crook.

41 Q. How far did it run straight ahead?

A. It ran across up to the Aiken line there.

42 Q. Do you mean by the Aiken's line the farm of Mrs.
643 Elizabeth Aiken, on section 14?

A. Yes, sir.

43 Q. How far was that road from the main Ohio river, say half way between where it now turns to the right and where it comes to Mrs. Aiken's line?

A. It must have been half way from where it turns—up to where it made the other turn?

44 Q. You see here (indicating) it turns to the right by Mrs. Aiken's line, half between this place and that (indicating); how far was that road from the Ohio river?

A. It was one hundred and fifty yards, I suppose, or near that. It was a little slanting; it wasn't nearly so far where it struck that line as it was when it struck that turn where the crook was.

45 Q. The river there bent around to the left?

A. Yes, sir.

46 Q. Above the Aiken's point, does it not?

A. It leant from where it makes this bend—it kind of tapered toward the river.

47 Q. Do you remember where the channel of the bayou was, on which side of Buck Island, at your earliest recollection?

A. On the Indiana side.

48 Q. Has the head of the island shifted, in your recollection?

A. Yes, sir; I think it has made down some, washed down
644 some, off of the head and filled up on the Indiana side of it.

49 Q. Do you remember any pond above the head of the island and on the Indiana shore?

A. I recollect about there being a wet slough there like, and was there for a good many years afterwards.

50 Q. Has that or not been filled up?

A. No, sir; never filled up—only with high water.

51 Q. I mean that pond or slough that you speak of; is that now farm ground?

A. Yes, sir.

52 Q. Or is it still a pond?

A. They are farming it now.

53 Q. Is it in cultivation?

A. Yes, sir.

54 Q. How long has it been in cultivation?

A. Twenty-odd years, somewhere; I don't recollect exactly.

55 Q. Do you remember about what time the road was changed, turning to the right abruptly, just above the island as it now is?

A. No, sir; I don't recollect the time exactly; it was a good long time ago.

56 Q. Do you remember of the road being changed?

A. I know when it was changed; yes, sir; but the time—
645 I don't recollect what time it was. Garrett got up a petition, and the people, and had the road changed there.

57 Q. Has there been any change in the upper end of the island, in your recollection?

A. Well, not very much; only it was filling up; that is all the change I see.

58 Q. Do you know whether Green River Island has been making or losing there, on the south side of the island?

A. On the Kentucky side?

59 Q. Yes, sir; below the tow-head, as it is called.

A. Well, it is making all the way down from the mouth plumb to the foot.

60 Q. Do you know whether or not the Kentucky shore opposite has been making or losing in the same time?

A. It has lost, more or less; it has not made anything.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

61 Q. You may state what was the condition of the bayou channel at the time of your earliest recollection, in times of summer and at times of very lowest water.

A. It seemed to me to be muddy and mushy there all the
646 time, at these crossings, and other places there was was plenty of water in them—deep holes.

62 Q. There were holes of standing water in the summer, were there?

A. Yes, sir; narrow places and deep holes along the bayou at several places.

63 Q. There was no flowing water through there in the summer, was there?

A. No flowing; only a little drain would be running across these highest places.

64 Q. Where did that water come from?

A. I don't know what supported it.

65 Q. Was it supplied by springs on the sides of the banks or not?

A. Well, that probably might have been.

66 Q. Did you ever know of any crossings of the bayou washing away?

A. No, sir.

67 Q. They always stay where they were placed, did they?

A. At my earliest day they just had one bridge that I was acquainted with; we crossed on that.

68 Q. Did you ever cross at any place except this bridge that you have referred to?

A. Not in my young days.

69 Q. Could you have crossed at any other place?

A. None that I know of; no, sir.

70 Q. How much above ground were those nine-foot posts
647 that you speak of as having been covered up when you set them out?

A. About five feet and a half.

80 Q. Was there a continuous fence or merely posts?

A. Yes, sir; they were made to put plank on; to make a fence.

81 Q. Did that fence catch the drift in times of high water?

A. No, sir; not much; it was right up and down with the current; it was not across the current. It was right up and down with the current, so that it did not catch any drift. Sometimes a log would lodge by it and probably it didn't hold it.

82 Q. What was the direction of that fence with reference to the bayou?

A. It ran right with the bayou.

83 Q. Where was the fence?

A. It was on the second bank.

84 Q. What did you put the fence there for?

A. To keep the stock out of my field.

85 Q. How far down the second bank was it?

A. Right next to the main channel bank; right on the main channel bank.

86 Q. Did the current in high water run at all times straight down in the same direction as the bayou?

A. No, sir; not when it is all over everything.

648 87 Q. Then, why do you say that this fence was in the same direction as the current of water?

A. It was when the bayou was just running through.

88 Q. But I am not speaking of that.

A. Well, when it is all over there was nothing for it to run across; it was clear over the top of that fence, so that the fence could not catch anything.

89 Q. What did you need a fence there for?

A. To keep stock out of the field.

90 Q. How could stock cross the bayou?

A. Oh, they could tramp across. We had stock there on the island ourselves.

91 Q. At the time you built the fence was it any trouble for the stock to cross the bayou anywhere?

A. Oh, stock would cross, and some hogs; hogs would cross the bayou; there was nothing to keep them from crossing.

92 Q. Was there, in your recollection, any trouble for stock to cross that bayou?

A. Oh, stock could cross the bayou, in the summer time, there.

93 Q. How wide was the bayou proper at the time of your earliest recollection—that is, the channel where the water was?

A. The main channel the water ran through, I guess, was something like fifty yards wide.

649 94 Q. In the widest part or in the narrowest part?

A. Well, the widest part I don't suppose was much wider than that.

95 Q. How wide was it in the narrowest part?

A. Fifty or sixty feet.

96 Q. How wide was the bayou channel at the place where this picket bridge was built?

A. Well, the main slough, that washed out; it ran out and ran in and washed it out in the lower water—cut it out—and the reason he put the bridge there was to keep that from washing out.

97 Q. That was a temporary shore out where he put the bridge there?

A. Well, it ran over all the time, when the water came up; every time the water came up it washed out there.

98 Q. It was a place where it washed out or filled in, just as it happened?

A. Yes, sir.

99 Q. A kind of a hole?

A. No, sir; it filled up when the water was all over, and when the water began to get shoal it began to wash out.

100 Q. How wide was that place?

A. At the head of that place that washed out it would be twelve or fourteen feet.

650 101 Q. How deep was it?

A. Four or five feet, I suppose.

102 Q. When the earth was washed down there, there would be no need of a bridge there, would there?

A. When it would fill in it was always miry and quicksandy.

103 Q. Was that the main mouth of the bayou there where the bridge was?

A. Yes, sir.

104 Q. Which side of Buck Island was it?

A. It was up above it, on the Kentucky side. The road was above Buck Island; Buck Island was down below that.

105 Q. How can it be above it, on the Kentucky side?

A. Well, it was next to the river from Buck Island.

106 Q. Then you mean to say that the channel at the time the bridge was made was between Buck Island and Green River Island?

A. No, sir.

107 Q. Where do you mean to say the channel was?

A. It was right there across from Green River Island to the Indiana shore, and Buck Island comes in and slants down; Buck Island is below where the bridge was.

108 Q. That place was sixteen feet wide?

A. That washout, that little hole that would wash out, where he put the bridge in, I suppose was fourteen or fifteen or sixteen

651 feet when it got down and washed out.

109 Q. Did that wash out when the water came in or when the water went back?

A. Well, both. It seemed when the water got over every place it would deposit in there and fill it up, but after the Doctor put that bridge there it stopped that and just went to filling it, and it never drained there any more.

110 Q. You say you think that the channel there was about six feet deep, under the bridge, where it was washed out most?

A. No; I think four or five feet.

111 Q. It was four or five feet when washed out the most?

A. Yes, sir; between four and five.

112 Q. How high was this picket bridge from this channel?

A. The box part of it itself I think was about four feet and a half.

113 Q. How high was the bridge above it?

A. The picket fence on it, I suppose, was something near six feet on top of the bridge.

114 Q. How much water, in your opinion, at the time of your earliest recollection, above low-water mark, would it have taken to flow into the head of the bayou?

A. I have no idea hardly.

115 Q. Would it have taken twenty feet above low-water mark?

652 A. No, sir; it would not have taken that.

116 Q. Would it have taken fifteen feet above low-water mark?

A. No, sir; I think not. I think about eight or ten feet would run through there, anyhow.

117 Q. If it would run in through the mouth of it would the eight or ten feet run down through the bayou?

A. The head was the highest place in the bayou.

118 Q. What makes you think it would have taken only eight or ten feet above low-water mark?

A. Nothing; only guessing at it.

119 Q. Was there any low-water mark established at the time of your earliest recollection?

A. No, sir; none that I know of.

120 Q. Are you speaking now of the time when the channel at the head of the island would be washed out most?

A. Of course it would wash out and the water would come down.

121 Q. How much water above low-water mark would it have taken in the Ohio river to have flowed into this channel at the time this picket bridge was built?

A. I could not say how much it took there. I never paid much attention to the river when it would be down—how much it
653 would take to run through. I never took any notice particularly.

122 Q. Would it have taken twenty feet above low-water mark?

A. I think not.

123 Q. Would it have taken fifteen feet?

A. I think eight or ten or twelve feet—somewhere along there—would have run through there.

124 Q. Then the bayou did not change much from the time of your earliest recollection up to the time the bridge was built?

A. No; it didn't change up to the time the bridge was built that I had anything to go by, but after the bridge was built I could see what a fill it was making. I had no mark or gauge to notice anything by until this bridge was built, and then I could see.

125 Q. When this bridge filled up was there an elevation where the bridge was or was the land higher or lower at either side?

A. No; it filled up all level; covered the bridge all up right along.

126 Q. Did it fill up the channel all the way down the bayou?

A. No, sir. Of course there is a deposit in it, but I don't know how much it filled up. It is filling up all the time—the bayou is; it has been from my earliest recollection.

654 127 Q. Would you state it has been filled up entirely the length of the bridge, sixteen feet wide?

A. I had more to go by of its filling up by that. The other way I had no mark to notice by. The bridge being there and covered up, I knew it was making there pretty fast.

128 Q. What has been the average fill of that bayou along its full length, in your opinion, since the time when you first knew it?

A. I have no idea. It is filled up, though, a good deal since I first knew it.

129 Q. Has it filled up two feet?

A. Yes, sir.

130 Q. Has it filled up five feet?

A. I guess it has filled up ten or twelve or fifteen feet.

131 Q. Where are those places?

A. Those holes—those deep holes? I have no idea how deep they were, but some of them are pretty near dry.

132 Q. You mean the ponds that used to stand filled up in summer?

A. Yes, sir.

133 Q. But I am speaking of the general channel.

A. Well, the shallowest places—the fording places—are filled up a good deal. I don't know how much.

134 Q. Filled up two feet?

655 A. Yes, sir; more than that.

135 Q. Has it filled up three feet?

A. Yes, sir. I think they are filled up four or five feet down in the main bottom of the bayou?

136 Q. Have all of them filled up as much as that?

A. I would think so; probably more.

137 Q. How long have they been cultivating the ground there in the bayou channel?

A. They have not cultivated it right in the channel.

138 Q. Don't they cultivate it in the channel now?

A. No place that I know of; not in the main channel.

139 Q. Is there not over a mile cultivated right along the channel now—cultivated in corn?

A. Across it?

140 Q. Right across the bayou channel.

A. They never cultivated right in the main bayou that I know of.

141 Q. I do not mean in the water, but what is generally known as the bayou itself?

A. Of course the second bank is.

142 Q. No; I mean what is known as the bayou itself. Isn't that, for more than a mile, in cultivation right across it?

A. Right in the main channel?

143 Q. Yes, sir.

656 A. Not that I know of. It might be down here at the foot. It might have been in this year or last year. I have not been there for a year or two, just right down in the channel—that is, in the summer time.

144 Q. Have not the corn-fields for several years, in those bottom lands, extended right to the State or county road and clear across the island to the Ohio river proper, without any regard to the bayou, in a great many places?

A. No, sir; not that I know of. They are tending it on the south side of the road—on the Indiana side—to the bayou, and on the other side from the bayou on.

145 Q. Do you know what was the occasion of making this bend in the road, at the head of the island, that you speak of?

A. I suppose it was to put that land in cultivation.

146 Q. What land?

A. The land they had taken in.

147 Q. What land was that?

A. They ran around that strip of land and put a fence around it and put it in a field.

148 Q. Who got up the petition to have that change made?

A. Corydon Garrett.

150 Q. Who made the change—what authority?

A. Well, he got up the subscription, I suppose, and got it through that way. — is the way I understand.

657 151 Q. But what way was that? Was there an order made and the county road given up? How could that be done?

A. I don't know. It was done through a petition, is the way I understand.

152 Q. What State or county or township officers did the work?

A. It was Knight township.

152 Q. Indiana officers, then, attended to the change in the road?

A. Yes, sir.

153 Q. Was the petition presented to the board of commissioners of Vanderburgh county?

A. I could not tell you.

154 Q. When that road was changed, on which side of Buck Island did it run?

A. It was above Buck Island.

155 Q. Which side of Buck Island was it?

A. It was on the east side. It was above the bayou, this was.

156 Q. Was there any opposition to that petition that you know of?

A. None that I know of; no, sir. I never heard of any.

157 Q. When the road was changed, on which side of the pond at the head of the island did it run?

A. That pond was between the road and the river; just a basin pond was in there.

658 158 Q. Between what road and the river?

A. The old road before it was changed; there was a basin pond in there—a pond that stood water there. Where the road came out to the river it went in above the pond, and this road was wet and muddy where they changed the road, and they hauled several thousand of rails there, and just laid rails and threw dirt on them, and just bridged it through there to make a road there.

159 Q. They made a road through the pond, did they?

A. Well, right at the lower end of the pond. It was mushy and wet and muddy, and after they got the petition through and the road through they put thousands of rails on it, and threw dirt on it to make a kind of a dry road there.

160 Q. When you first knew Buck Island was there any water flowing around it at all seasons of the year?

A. Not at all seasons.

161 Q. How was it in summer, in times of lowest waters; was there any water around Buck Island then?

A. I don't know whether water stood right around Buck Island or not, but this bridge close to it there was a pond of water right below it, but I don't know whether it reached up around Buck Island hardly or not. There was a big pond stood right below it the year around.

162 Q. How long did you say you had known Green River
659 Island?

A. Ever since I have been old enough to know anything; I was born and raised there.

163 Q. Do you know whether the head of Green River Island has ever extended up beyond the section line between sections 14 and 15 at all?

A. No, sir.

164 Q. Has it always been on this side—towards Evansville—of the section line between sections 14 and 15?

A. Yes, sir.

165 Q. Did you ever hear anybody say that the head of Green River Island had ever extended beyond the section line between sections 14 and 15?

A. I have heard it claimed as that; I have heard people say that that was the head of the bayou at one time.

166 Q. That what was the head of the bayou?

A. Up there where the road was changed; the bayou ran right down through where that old road used to run.

167 Q. Did the road run to the section line?

A. Yes, sir.

168 Q. And then ran down on the section line, did it, to the river?

A. Ran right to the river.

169 Q. You have heard that the island ran up to the section line?

660 A. I have heard people say that; all I know is hearsay.

170 Q. You never heard anybody claim that it ran beyond the section line away from Evansville?

A. Yes, sir; ran on through. I have heard them say it took up a little of Mrs. Aiken's land.

171 Q. In the year 1857 was the head of the island where it is now?

A. Yes, sir; about where it is. It is down the river a little bit, I think.

172 Q. How much has it gone down the river since the year 1857?

A. I couldn't tell. It has gradually washed off the head of the island and made on the upper side.

173 Q. How much has it changed since 1857?

A. I don't know; fifty or sixty yards.

Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

174 Q. I will get you to look at the map marked Exhibit "C," representing the head of the island, sand bar, &c., at the present time, and observe how the county road now runs.

A. That is the way it runs now, is it (indicating on the map)?

175 Q. Yes, sir. Now, this being Buck Island (indicating), about where did the road formerly run, that you have mentioned,

661 from this pond, this being the section line (indicating) between sections 14 and 15, and Mrs. Aiken's farm being here (indicating)?

A. That is the way it ran, in this direction (indicating). It ran a little quartering from here towards the river (indicating on the map).

176 Q. You say it ran nearly straight from this point (indicating)?

A. Yes, sir.

177 Q. Commencing at a point in the road at the head of Buck Island, the first bend of the road as now delineated on the map, how did the old road run with regard to the point marked "sycamore?"

A. It ran right up in this direction (indicating) to this line and then ran out to the sycamore.

178 Q. It ran nearly straight to this point, the first bend in the road at the head of Buck Island?

A. It ran nearly straight from the first bend in the road at the head of Buck Island to a point on the section line between sections 14 and 15, about four rods north of the point marked "sycamore corner tree." That is as near as I know about it.

179 Q. Show us on this map where the bend was that you speak of.

A. It was right between this road and where the old one did run.

180 Q. Point out on the map where the road, when it was
662 changed, was made—the rails, &c.

A. From this crook there (indicating) to where it crooked to the river.

181 Q. From the first bend down to the point where it takes up the river?

A. Yes, sir; it was railed from this bend here (indicating) over to the river, where it went up to the river.

182 Q. As to the height of water above low-water mark which at your earliest recollection would have made a stream flow in at the head of the channel, was your answer to Mr. Snow anything more than a guess?

A. No, sir; I never had anything to go by; I don't know at all, only just guessing at it.

183 Q. Can you say that a foot rise above low-water mark would not have run in at the head of the bayou, at your earliest recollection?

A. I don't think it would.

184 Q. Can you say certainly that it would not?

A. I think it would have taken a little more than that.

Recross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

185 Q. Do I understand you to say that the portion of the new road that was built on rails or logs was the portion from the first bend towards Evansville, from the place where the road lead-
663 ing from Evansville first turns toward the river to the point where it turned and went in the general direction up the river?

A. It was built in that place across that slough, between the two roads. You see here is the road now (indicating on the map), and here is where that road was (indicating), and the slough was right between the two, and when the road changed across there, across this slough here, then they had the bridge made, the rails and dirt, and filled it up to this place here (indicating).

186 Q. The question I asked you was whether the portion of the county road beginning at a point as you come from Evansville, where the road first turns towards the river, to the point where it first turns to go up the river was the portion where it was built with logs or rails?

A. Yes, sir; that portion.

187 Q. For how long a distance was the road at that point built on rails or logs?

A. I suppose a couple of hundred yards or one hundred and fifty; one hundred and fifty to two hundred yards; somewhere along there.

188 Q. That road was built, as I understand you, over a part of a pond which stood there?

A. Yes, sir; a pond-like place.

664 189 Q. How was that pond supplied with water?
A. By rains and high water, I suppose. There was no water running in it.
190 Q. Did that pond have any connection with the bayou?
A. No, sir; it was higher than the river, but it was lower down at this end.
191 Q. Did this pond have any connection with the river?
A. No, sir.
192 Q. How much above the level of the river and bayou was this pond?
A. I don't know how much difference there was; right smart, though.
193 Q. About how much—twenty feet?
A. No, sir; not that much, I suppose.
194 Q. How much above the bayou was this pond?
A. The depth of it?
194 Q. The surface of the pond—how much was that above the bayou, from the depth of the bayou up to the pond?
A. I guess it was about twelve feet at that time, but the main bayou now is pretty near up level with it.

Question by Mr. CUNNINGHAM:

195 Q. You mean it was about twelve feet up from the bottom on the bayou to the level of that pond?
A. Yes, sir; to my present recollections. The main bayou
665 ran around opposite to this pond at that time, and now the main bayou is filled up and cut off in another place. The main bayou is now filled up pretty near to the depth of the bank.

Question by Mr. SNOW:

196 Q. That pond had no connection with the Ohio river or with the bayou?
A. It had none, in my recollection.

And further the witness saith not.
(Signature waived.)

Dr. GEORGE W. YATES, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposes and says as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. State your name.
A. George William Yates.
2 Q. What is your age?
A. Sixty-one.
3 Q. Give us your residence.
A. Evansville, Indiana, at present.
5 Q. How long have you resided in Evansville?
A. Eighteen years this November; nearly eighteen years.

6 Q. Where did you formerly live?

A. I formerly lived on the island.

666 7 Q. On Green River Island?

A. Yes, sir.

8 Q. Do you own land there now?

A. It is not my land; I deeded it to my wife.

9 Q. What part of the island is that?

A. The head of the island.

10 Q. How much land do you own there?

A. That is a hard thing to state; there is some in dispute. The whole of it together, with the disputed part, would be 125 or 130 acres.

11 Q. What part is in dispute?

A. The bayou part and part of the head of the island.

12 Q. Since what time have you been acquainted with the island?

A. Well, I worked there; my brother and me worked there in 1845 for Aikens; and 1846, I think it was in September, my father bought the premises, and in 1847 we moved there.

13 Q. Are you or not familiar with the bayou between the island and the Indiana bank?

A. Yes, sir.

14 Q. How long have you known that?

A. I have known that from 1845 to the present.

15 Q. Do you know that bayou, from one end of the island to the other end of the island?

667 A. The lower part I am not so much, but I have been at the foot several times, and saw two or three chutes or mouths of the slough or bayou.

16 Q. What, if any, changes have occurred in that bayou since your first knowledge of it?

A. Great changes have been made in filling up since the first time I seen it or remember it; not so much in the channel as on the second bank.

17 Q. How wide was that bayou, from bank to bank, at your first knowledge of it?

A. It varied some; two hundred yards; it would average that, and in some places, I believe, nearly three hundred yards. Where the island comes in, from two hundred to two hundred and fifty, anyway.

18 Q. What was the average depth of water in the bayou, in an ordinary stage of water in the river, at your first recollection?

A. Well, we had no gauge then, and I am a little like the rest of them, I am lost for a low-water mark. At a medium stage, probably twenty-five to thirty feet; it would probably be—guessing at it—it would be about six or seven feet in the bayou all the way through; that is my judgment.

19 Q. On an average?

A. On an average. It was deeper at the lower end—it would swim him at the lower end when running through at the upper end.

20 Q. Swim what?

668 A. Swim a horse. Probably a horse could not wade through it at the foot. A foot and a half at the head would swim a horse at the foot. It would be five or six feet deep at the lower end of the island when it was one and a half at the head.

21 Q. Where in the bayou has been the greatest fill?

A. At the head of the island and at the foot of the Island. The head of the island is the greatest changed.

22 Q. How much, in your best judgment, has the island filled at the head since you first knew it?

A. I suppose it has filled up there at the head—from Buck Island up that slough there—I should think twenty feet. I have no way to measure. I could not tell you that, but just judging the depth of water—and I know several that were in the water and said they could not dive to the bottom of it—I suppose it was 20 or 25 feet; maybe more.

23 Q. Did you ever place any obstruction in the bayou?

A. Yes, sir.

24 Q. When was it?

A. I think it was in 1869.

25 Q. Where was it?

A. I could not get to town.

26 Q. I say where was it?

A. The mouth of the bayou. I thought you said why was it.

669 27 Q. What do you mean by the mouth of the bayou?

A. I mean the present mouth of the bayou now.

28 Q. But which was it—the head of the island or the foot?

A. At the head of the island; yes, sir.

29 Q. What obstruction was that?

A. I could not get to town here as long as the people on this side could, and I put some posts—probably nine inches through, walnut posts—down below the surface and anchored them and planked them up with two-inch plank up to about four and a half or five feet. After doing that then I planked them over the top so that the water would not wash them off, and whenever the water fell it would leave that there. Then gradually the drain in the hole—the water in coming up continually swept off the sand, and there was nothing in there to make a crossing over; and when there was high water I couldn't get to town as long as the people on this side could, and I put in this crossing. I could walk it and swim my horse, and that is what I did it for.

30 Q. After making this bridge some four and a half or possibly five feet high, that you speak of, what did you put on top of that?

A. I put a picket fence.

670 31 Q. How high was it?

A. Six-feet pickets, possibly, might be six feet and a half from the lower part of—from the upper part of the bridge; just left a crack underneath to keep dry. The pickets were six feet long, anyway.

32 Q. What became of that fence?

A. That fence gradually filled up. The last I saw of it in about

ten or twelve years it was all standing out, all the pickets, possibly six or eight or ten inches; and from that and the previous fill I suppose four or five feet were covered.

33 Q. You say now it was covered four or five feet?

A. I suppose so; I do not know. I saw the way it was filling from 1869 to ten years ago—that would be 1879—and in ten years it had pretty nearly covered the pickets. I suppose from that it would be eight or ten inches out, and I say it was covered four or five feet, just guessing; I could not tell exactly. Anyway, it gradually filled up for eight or ten years, until the pickets were only six or eight inches out all the way along. I made a picket fence twenty rods, as near as I could judge. I made it from one bank to the other, both sloping banks, descending right to the mouth on both sides—what is called on the Indiana side. It was continually draining all the time. After the water fell and left it dry enough
671 to cross there was a hole at the head of the island, at the neck, where water used to run—a deep hole, probably twenty feet. It drained out there; washed out to the mouth there.

34 Q. At your first recollection, did the water run from the river into the bayou in ordinary stages of water?

A. Yes, sir. We called them twenty-five or thirty feet ordinary stages. We have to guess at these stages. I suppose water like we had last time would run through there, right through the bayou from one end to the other.

35 Q. I say before you placed that obstruction there.

A. Yes, sir. From that obstruction there I could not tell; that is what bothers me. The ground on both sides of the bank gradually filled up, and the picket fence as well. The deposit in some freshets was an inch and a half to a foot, according to the muddy condition of the water.

36 Q. Have you any idea how much the water lacked of running in at the head of the bayou during the last rise?

A. No; I could not tell you that; I was not there.

37 Q. Does the road at the head of the island now run as it did at your first recollection?

A. No; there is a change in the road.

672 38 Q. What difference has there been made in it?

A. Well, from the present road now—it is probably 150 or two hundred yards from the road now to the river; but at the bend right at the head of the island, where we used to call the head of the island, right at sections 14 and 15, the road used to bear off to the left. The original survey stopped short of that, about four chains from the sycamore. It used to run from that line, run from the neck of the bayou. Where the road now bends it used to run straight and bear to the left.

39 Q. Do you mean by the neck of the bayou where the road goes up and makes the first short turn to the right?

A. Yes, sir; that is where I mean.

40 Q. From that point to the point some 4 chains north of the sycamore corner, on the section line between sections 14 and 15?

A. Yes, sir; it was about four chains; I could not tell you ex-

actly, but it used to follow a ridge. If the corn was all stripped off of the ground you could follow the ridge very well. They took it as being the highest place and the best road.

41 Q. Have you ever been present when the section line between sections 14 and 15 of Knight township was run?

673 A. Yes, sir; ran it two or three different times.

42 Q. Do you know the sycamore now marked as the corner?

A. Yes, sir; I know where the present sycamore is.

43 Q. How far from that sycamore, on that section line, was the original corner as established by the survey of 1806?

A. According to our run there, we stopped short about 4 chains, to a box elder close to the ridge there.

44 Q. What do you mean by "stop short?"

A. In making over the back corner of the section, coming in towards the river, it was 68 chains to the sycamore and 64.25 to the box elder.

45 Q. In what direction is the sycamore from the corner of 1806, and how far from it?

A. I suppose—I do not know—I think the lines run on the north side, within a few degrees from the sycamore, to what I understand is the original corner, where the surveys were made, about four chains—that is, 16 rods.

46 Q. About 85 rods?

A. It would be 88 yards from the sycamore. It is a fraction, maybe, one way or the other; about 4 chains, as near as I can recollect; it is a fraction either more or less, in my recollection.

49 Q. How far from that sycamore does the road now run, in going up the river?

A. It runs right close to the sycamore; between the syca-

674 more and the commissioner's corner or stone there.

48 Q. What do you mean by the commissioner's corner?

A. Well, Pfafflin & Walden were the commissioners appointed to run the boundary line, and they planted a rock there probably two rods from the sycamore. I could not tell; I never measured it; but I guess about two rods.

49 Q. In what direction from that sycamore does the road run, coming down below?

A. Up and down the river?

50 Q. Coming down the river.

A. It runs a northwesterly course, going down the river.

51 Q. How far from the bank of the Ohio river?

A. It is right on the bank, where the present road runs now.

52 Q. How far does it run down on the bank of the Ohio river?

A. It runs to the mouth of the bayou, where the present bayou is. We did measure it, and it was 94 rods, and from the mouth of the bayou up to the road it would be probably 20 rods. I could not tell exactly; I never measured the distance; but I suppose it would be twenty rods from the present mouth of the bayou up to that line of sections 14 and 15.

53 Q. Do you remember the form or the condition of the ground

675 between the present road and the old road *and the old road* before it was changed?

A. Yes, sir. The road used to take up and bear to the left, and the bend of the river formed a point, and it came out near the section—I could not tell the distance above the section line, but run considerably above it.

54 Q. Do you mean it ran considerably above the section line before it reached the river?

A. Yes, sir; considerably above. There was a ridge; the ridge shows where the road ran.

55 Q. How much land is there between the lines of the old road and the present road?

A. From the section line down?

56 Q. Yes, sir.

A. From the section line down there is 15 acres in one survey made by County Surveyor Bateman; I think he made a survey; and I think a surveyor from Henderson county made it 16 and three-fourths acres.

57 Q. The Henderson county surveyor?

A. Yes, sir.

58 Q. Do you remember the form and condition of that land?

A. Yes, sir.

59 Q. What was it?

A. In 1845 it seemed that the head of the island attached
676 to the Indiana shore, and in a sloping condition—that is, above the section line of 14 and 15—leaving a pocket, or they called it a pond or slough, at the lower end, and there was a great deal of drift there that was connected with the bayou, and right below that drift was a deep hole, probably 20 feet; I could not tell you how many feet. That pond they talk about was filled up at the lower end with drift, and finally made a crossing there, and Mr. Stansberry mentioned about the rails being laid as a crossing there, and at the head of the island was a shipping point. Uncle Sam took lots of corn there, and they brought some suits—probably 20 suits—below the section line. They brought suit against Uncle Sam for *not* taking some corn there.

60 Q. Who do you mean by Uncle Sam?

A. Uncle Sam steamboat.

61 Q. Where was that suit brought?

A. Brought in Henderson. I don't know anything about this, only they tell me it. It is hearsay.

62 Q. Was the road that you speak of as being constructed of rails across the lower end of that pond or pocket the same as the present road?

A. I suppose it is moved a little lower down; they keep moving lower down.

63 Q. Was that the road that was adopted when the change
677 was made from that line?

A. Well, with a little variation. It is lower down, I would say.

64 Q. For what was that road first constructed there?

A. To go up to the shipping point. They made a shiping point of it, this point at the head of the island. We cleared out that 15 acres ourselves.

65 Q. Then do I understand you as saying that this road was constructed for the purpose of getting corn from the fields to the river?

A. Yes, sir. For the lower part of the bayou on the Indiana side it was more convenient than hauling up further. It was a good shipping point at the head of the island, and they made that crossing there for the purpose of shipping there. A crossing was made there several times; a pile of drift first formed at the head of the basin and finally sediment settled in it. It was right in the timber and couldn't move, and that is how it formed the pocket. And that slough—and in my mind there is no doubt of it—I am satisfied was the original slough from the Kentucky bayou.

66 Q. What do you mean by the original slough?

A. The main hole of the bayou originally on the right-hand side, as you go up on the Indiana line, or the Indiana State road.

67 Q. Do you mean the bayou between Green River Island and the Indiana shore?

678 A. That is what I mean.

68 Q. You think that pond, or pocket, or bayou, or whatever it was, was originally a part of the Green River Island bayou?

A. Yes, sir; I think from the connection there was a real connection. That is the reason they made the first crossing—made two or three crossings.

69 Q. That judgment is based upon your observations——

A. (Interrupting). Yes, sir; I saw it done.

70 Q. (Continuing)—of the topography at that time?

A. Yes, sir.

71 Q. How far, if at all, has the head of the bayou shifted, in your recollection?

A. The present bayou?

72 Q. Yes, sir.

A. I could not tell how far; there was a bunch of big timber there; there used to be a lot of drift there that Garrett set fire to. It has not varied fifty to a hundred yards down lower—fifty to one hundred yards, I guess.

73 Q. Has there any change occurred in the head of the island?

A. The greatest change in the head of the island, I think—when the timber and corn and weeds are out of the way you can see where it has formed—is on the Indiana side, above section line, be-

679 tween sections 14 and 15. It gradually descends down to where the road turns now.

74 Q. What change has occurred at the head of the island?

A. Filled up from the bottom.

75 Q. Has the head of the island proper gained or lost?

A. It has all made, no loss at all—that is, up and down. There is a bar forming out to the river now and attached to it that is growing all along. There is a bar that gradually slopes to the bank.

76 Q. Do you mean by that on the south side of the island?

A. On the south side of the island, from sections 14 to 15. It begins at the point there and forms, gradually widening out to the river all the way down, not only at the head of the island, but clear down past my place. Four years ago—I think in 1884—we were there. It has made out very near twelve feet in front of my place; that is probably one hundred and fifty or two hundred rods below sections 14 and 15. It has become tillable land. When we first moved there you could not find the bottom. We just had built a fence to keep the hogs out, but had no river fence; there was a deep slough of water there.

77 Q. What, if any, change has occurred on the Kentucky bank opposite the island, in your recollection?

A. Well, I believe it is washing off at present. It made a little on the island; made a little there and washing that corner,
680 and below the island it has washed away considerably the further down you go.

78 Q. Has the accretion to the island been slow or rapid?

A. Rapid.

79 Q. Has any change occurred in the banks of the bayou since your first knowledge of it?

A. Yes, sir; I think they are not abrupt as they were, for two reasons—one for ploughing and one for the filling up of the bayou. The ploughing of the sides and the filling up of the bayou makes it appear not so abrupt. It used to be steeper.

80 Q. Taking the bayou from one end to the other, at your first recollection of it, was there any growth of the timber between the first banks?

A. Where to?

81 Q. That is to say, the second bottom?

A. Yes, sir; considerable timber. The large trees were right along the bank, on the Indiana side, and grew out sloping; but there was no very large timber; cotton-woods two and a half at the extreme bottom of the butt; there was no brush or underbrush; it was generally cotton-wood and willows all through there; but in 1850—I could not exactly remember the year—we would have to cut it down, so that the boats could go up that way.

82 Q. On which bank did the large trees of which you
681 spoke as leaning from it stand?

A. On the Indiana bank.

83 Q. Were there any on the island bank?

A. There was on the island bank; some large trees on the island bank.

84 Q. In what direction, if any, did they lean?

A. Leaned towards the bayou; the same direction—that is, they both leaned over the bayou.

85 Q. Have you any knowledge or inclination of the condition of that bayou before you first saw it?

A. Nothing, only hearsay; nothing, only what is hearsay. Isaac Knight said, in the presence of me and Garrett, that he could stand at the head of that chute and see clear through, and that the island was like a sand bar.

86 Q. How long has Isaac Knight been dead?

A. I don't know how long he has been dead. He was taken by the Indians, if that is evidence; that was hearsay. He told me, in the presence of Garrett and me, that he could stand at one end of the bayou and see clear through at the head. I think we went to get him as witness in 1850 or 1855.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

87 Q. How wide was the bayou channel, the bayou proper, at the time of your earliest recollection?

A. You might call it all bayou—two hundred yards; the
682 middle of it, to be one-third the distance, probably seventy-five.

88 Q. I am speaking of the bayou proper—where the water generally stood and run.

A. The second bottoms that they have been asking about here all the way along the bayou proper and winds around—that was probably fifty to seventy-five yards wide, about one-third the distance, as near as I can judge. I never measured it in but one place, and that was three hundred and fifty yards, the one Henry Stansberry speaks of, where the posts were set.

89 Q. I am speaking of the widest place.

A. That was fifty to seventy-five yards.

90 Q. How wide was it in the narrowest place?

A. It varies very little; it winds about.

91 Q. How wide, at the time of your earliest recollection, were the narrowest pools that used to stand there in the summer?

A. It would be twenty or thirty yards wide. It descended down. It was all bayou once, but the drift that formed formed islands and formed these benches that run into the timber. They would get water-soaked laying there, and in time form a basin, and then the sediment would form there. I know one place. That is the very place where he speaks of. I have stepped over the drift where it had formed. It stayed there until it rotted and was covered
683 with sediment.

92 Q. This is your opinion?

A. It is no opinion. I saw it transpire.

93 Q. You are positive of one place where it filled?

A. Yes, sir; that way with drift. It is my opinion that the rest is formed that way.

94 Q. As I understand you, you said that you owned land on Green River Island?

A. I did.

95 Q. In what years did you own that land?

A. In 1883.

96 Q. Was this picket fence that you spoke of a boundary fence of a boundary line?

A. No, sir. We claimed up above the section line between 14 and 15 to the State line. Our boundary calls for the State line. Our

land commences on the river at a cotton-wood and runs north 6 inches to the Indiana State line, and thence up the bayou, with the Indiana State line, to the head of the island; and thence around, with the head of the island, to the main Ohio river; and thence, down the Ohio by the meander lines, to the place of beginning.

97 Q. Down the Ohio by the several meanders thereof?

A. Yes, sir.

98 Q. What did you build this fence for?

A. I told you that when I came to town I wanted to come
684 to town as long as anybody else on this side. I could not do it for that water.

99 Q. What was the object of building a fence one hundred and fifty feet long?

A. Well, it was a slough, and standing water caused the deposit, and with a picket fence the water would run through. Anybody that knows anything about bottom land will say that a picket fence will stand when a plank fence won't.

100 Q. What did you want to get pickets six feet high for?

A. To get hold of the picket and walk by and lead my horse—swim the horse. I could ride to town when I got across the slough.

101 Q. Why did you need to have the pickets six feet high?

A. I wanted to make it high enough to make a place I could walk on in high water so that I could get to town. Not much short of six feet would turn anything away.

102 Q. On which side of this fence was the hole you spoke of?

A. Right north—in the neck of the bayou—where the present road runs. It is right north of the bayou road, in the neck of the bayou. They drained that, and when the water all fell this would cave in, and we could not cross it dry-shod without putting some crossing there—rails sometimes—when the water was four or five inches deep. It was running out all the time.

685 103 Q. You say the hole was north of the bridge?

A. Yes, sir; north of the bridge, a northerly direction; it might vary a little east or west. It was right above Buck Island. It is now pretty near level with the road—with the present road now.

104 Q. How much deeper was that hole than the bayou on either side of it?

A. That was at the foot of the pond, I understand. I say there was a connection by the drain—drain from the river basin. That pond was the slough; it was the original bayou, that is my opinion; and this was a hollow, that is pretty near level now, right at the neck of the basin. It was twenty feet deep at least until you came down to the mud. That would not drain there—the mud. In process of time it would drain.

105 Q. You mean that hole was twenty feet deeper than the surface of the bayou on either side?

A. Yes, sir.

106 Q. What kind of a drain was there between the pond and the hole?

A. Just the same as water running through sand.

107 Q. There was higher land between the pond and the hole, and the water ran through, did it?

A. When the deposit was sand it drained from the hole to the river, and would run down, I suppose, until it came to the
686 mud, and would not drain any further. I put the bridge there to stop it. When the water dried we could cross, but we were afraid—the sand was quite miry—and I planked it over so that it would not wash out. I had to come down here in all kinds of weather—at night and all times—and I could take my horse and get to the pickets, and I could go up and down to town as long as anybody on this side; I could not go any longer; then I would take a skiff.

108 Q. By whom was the road changed at the head of the island from its old position to its present position?

A. I suppose Garrett had a hand in it. I went to a man by the name of Smith Collins and objected strongly to it.

109 Q. Who was he?

A. He is dead now; I think he was a county commissioner. That is the man I went to see about it.

110 Q. Why did you object to it?

A. Because I claimed the land and cleared it and had it fenced.

111 Q. Of what county was Mr. Collins commissioner?

A. Knight township, Vanderburgh county.

112 Q. Was the change in the road made by officers of Vanderburgh county?

A. I do not know. It was changed, I suppose, as he said. I do not know.

113 Q. Where did you go to make your protest?

687 A. I went to Smith Collins. They said he was one of the men that had a hand in it. They had a suit in court, and they brought me into the circuit court here, and then changed the fence. I think that was determined in 1855, if I recollect aright.

114 Q. What was that suit about?

A. That was a suit for trespass.

115 Q. Describe the suit. What was done in the suit?

A. I have already given you the result of it.

116 Q. Describe it fully; tell the circumstances of the case and what the decision of the court was.

A. They found him one cent damage. I told the jury at the beginning of the trial that I was guilty. I chopped down and took 4,000 rails away.

117 Q. What did you do?

A. Hauled away the rails.

118 Q. Where were those rails?

A. When we were away—we had possession of it and cleared it—and Garrett, when we were away, went and cleared it and put in a crop and fenced it while we were away. It was all done in a day.

119 Q. You may describe where the land was.

A. Just opposite the old road, this side of sections 14 and 15. It is a little below, probably ten steps; commencing ten steps below 14 and 15 and run down to this present road now. He took a

three-cornered piece in, and they fenced it and put a crop
688 in it, and in the fall cut down the crop and hauled off the rails, and that is what they found the one cent damage for.

120 Q. Was this piece of ground between the old road and the present road?

A. Well, it is between; it is up the river from the present road that makes this crossing. From there it runs up the section line between 14 and 15.

121 Q. Was the piece of land you speak of bounded by the section line between sections 14 and 15 and the two roads?

A. Yes, sir; that is it exactly; between the two roads—the old road and the present road. There was fifteen acres by one survey and sixteen and three-fourths by the other.

122 Q. You took some rails off of that land, or had it done?

A. Yes, sir; had it done.

123 Q. And Garrett claimed that land as his?

A. Yes, sir.

124 Q. He sued you for trespass?

A. Yes, sir; sued us for trespass.

125 Q. What was the judgment in the case?

A. One cent damages for trespassing.

126 Q. Against whom was the judgment?

A. Against G. W. Yates and his brother, Charles C. Yates.

127 Q. Why did you claim that land?

689 A. Because the head of the island runs above sections 14 and 15 on all the maps we could get at that time.

128 Q. What maps do you refer to?

A. County maps of Indiana.

129 Q. What claim did they give you to this piece of land between the two roads?

A. That gave me a claim to the original State line.

130 Q. Where was that?

A. On the Indiana side. On the road that went up and down the river, the old road.

131 Q. In your opinion, that was the State line, and you claimed up to that line?

A. Yes, sir; I am positive that is the line.

132 Q. Why are you positive?

A. I have seen it run a dozen times, and by the opposite parties. There never has been a line run there by any authority, by commissioners or original surveys, until the last twenty years.

133 Q. On what did the surveyors or commissioners run in that line base their opinion as to its being the State line, did you know?

A. By measurements.

134 Q. By measurements from what?

A. From the field-notes of the original surveys. They ran out and in to get the meanders.

135 Q. Did they run the State line along the meanders of the Ohio?

690 A. That was considered the Ohio river; not the bayou. It

was called the Ohio river and not the bayou; the bayou it is called now.

136 Q. How do you know that was the Ohio river?

A. Because the papers call for it; they did not call for the bayou at all. None of the field-notes call for the bayou or the original deeds call for the bayou. There is no original field-notes called for the bayou; it is just the Ohio river.

137 Q. Was one of the boundaries named in your deed the meanders of the Ohio river?

A. Yes, sir; I will give you the description: Commencing at a large cotton-wood on the river and running north six feet to the top of the bank—that is, on top of the Indiana bank—and then on top of the Indiana bank to the Ohio river; thence down the Ohio river, by the several meanders thereof, to the place of beginning. That is just the description of the land.

138 Q. One of the boundaries, then, was not the meaders line of the Ohio river, but——

A. (Interrupting.) Yes, sir.

139 Q. (Resuming)—but the straight line?

A. That was considered the Ohio river then; the bayou is just a nickname. That is the Ohio river; the bayou is just a nickname. There isn't any mention of it in the field-notes or anywhere else.

691 140 Q. Was the only claim that was ever made, within your knowledge, by yourself or anybody else, that the State line was on the line of the old road founded on the United States survey of 1806 or not?

A. How was that? Repeat that again.

141 Q. Was the only claim that you or anybody else ever made that the old road near the head of the island run on the State line founded on the Government survey of 1806?

A. I do not know anything about what anybody else did. We claimed up — the State line because the deed called for it.

142 Q. You claimed the line of the old road was the State line of Indiana, and that was founded on the Government survey of 1806?

A. Yes, sir; we claimed it by the 1806 field-notes. The dispute between us was whether they had a right to go beyond it. They claimed they had a right to go to the bayou channel.

143 Q. Your claim was founded on the Government survey of 1806?

A. Yes, sir; we considered that the boundary line or State line, or whatever you have a mind to call it—we claimed up to that.

144 Q. That was the only thing you founded your claim on, was it?

A. We have the title for it.

692 145 Q. I mean to say your only claim that the State line was on the line of the old road was from the United States survey of 1806?

A. Well, we claimed that that was the boundary. I do not know how much the road varied from it. When the survey was made it ran to the left of the road all the way up.

146 Q. Was the claim you made that the meander lines along the river formed the boundary line made on the survey of 1806?

A. We claimed that was the boundary line.

147 Q. You claimed the meander lines of the Ohio river in the survey of 1806 as the boundary line of the State?

A. That is exactly what we claimed; and, more than that, Mr. Saunders' father run that line for it; and in 1870 the county surveyor of Henderson run that same boundary that the commissioners made, just exactly the same.

148 Q. Do I understand you to state that in your opinion the mouth of the bayou channel has moved down from beyond the section line between sections 14 and 15 to its present location?

A. No; don't understand me that way; the island proper runs up to above sections 14 and 15.

149 Q. How do you know it runs up there?

A. By the maps.

150 Q. You judge entirely by the maps?

693 A. By the measurements and from surveys made by his father (referring to Mr. Saunders).

151 Q. By what map do you judge that the island has ever run above sections 14 and 15?

A. The surveys will tell you.

152 Q. By what surveys?

A. Every survey that has been made when there was any authority.

153 Q. By what map?

A. The county map of Evansville.

154 Q. Do you remember whether in 1857 the head of the island extended up—that is, away from Evansville—beyond the section line between sections 14 and 15?

A. It has always, according to the original field-notes. It does today.

155 Q. What original field-notes?

A. The original boundary we claimed to.

156 Q. I asked you, did or did not the head of the island extend away from Evansville beyond the section line between sections 14 and 15?

A. Just the same as it does now.

157 Q. On which side of the section line is it?

A. Right where it always is; just above sections 14 and 15.

158 Q. What do you call above?

A. Above on the river.

694 159 Q. The head of the island at present is above the section line between sections 14 and 15?

A. Well, I consider that the head of the island.

160 Q. Why do you consider it so?

A. Because the original survey includes it.

161 Q. I am not talking about the survey of 1806. I am talking about your own observation of what you consider the head of the island. You have some point in your mind as the head of the island?

A. Yes, sir.

162 Q. Where was that head of the island with reference to the section line between sections 14 and 15?

A. I do not think there is much difference from then and now and from now and then. It is above the section line between sections 14 and 15 at present and was then.

163 Q. Do you mean to say that in 1857 the head of the island was above the section line—away from Evansville—between sections 14 and 15?

A. Yes, sir, and it is to-day.

164 Q. Do you know where the section line runs?

A. Yes, sir; pretty closely.

165 Q. You stated that to-day the head of Green River Island is away from Evansville and above the section line between sections 14 and 15.

A. Above the section line between sections 14 and 15.

166 Q. You consider the head of the island is shown on the map of 1806, do you?

695 A. No, sir; I am talking about 1857.

167 Q. You consider the map of 1857, which has been introduced in evidence in this case, as showing the head of the island?

A. As filled up since 1806. I consider that the head of the island.

168 Q. You judge by that entirely?

A. Of course not. I judge by the field-notes.

169 Q. You judge by the field-notes of 1806?

A. Yes, sir; that is right. In 1806 it did not run so high.

170 Q. How do you know it did not?

A. By the field-notes.

171 Q. Are you sure the field-notes of 1806 say anything about Green River Island?

A. I am not sure about that.

172 Q. How do you know that the head of the island was in any different place than what it is now?

A. Only by the field-notes.

173 Q. You do not know anything but what the field-notes tell you?

A. I know where that was.

174 Q. Do you know that the field-notes of the survey of 1806 refer to Green River Island?

A. They call it the Ohio river.

175 Q. You do not know, then, whether the survey of 1806 mentions the words "Green River Island?"

696 A. I do not believe it does.

176 Q. Yet you say that you judge that Green River Island has changed its location by the field-notes of 1806?

A. Yes, sir; filled up and added to it; filled up and added to the head.

177 Q. Did you consider Green River Island as being on the north side or the south side of the bayou, at its head?

A. Green River Island being on the north side of what?

178 Q. Of the bayou.

A. Well, I consider the island at the head is attached to the Indiana side by the field-notes there, and it is the north side of the field-notes—the south side of the field-notes.

179 Q. I am talking without regard to the field-notes or anything else. Did you consider that Green River Island lies on the south or north side of the Green River Island bayou, at its head?

A. It lies on the south side of the field-notes, and we call that the head of the island. It is all filled up. There is no bayou there now.

180 Q. You say you consider the island—that is, Green River Island—to go up to the meander lines in 1806?

A. Yes, sir; in 1806. I think it has filled up since then. The original bayou, my opinion is, was originally above sections
697 14 and 15, and that filled up, probably, three acres above sections 14 and 15, added on to the island, and as the point washed off it would attach itself more closely. The more it washed off the more it would attach to the Indiana side.

181 Q. Did the bayou ever run in beyond the section line between sections 14 and 15?

A. I never saw it. I saw a slough indicating something. That, in my opinion, indicated it did.

182 Q. At the time this suit was going on, in 1850 to 1855, where was the mouth of the bayou or the head of the bayou with reference to the section line between sections 14 and 15?

A. Well, we claimed then just as we do now.

183 Q. I am not talking about any claim. I am talking about the bayou.

A. Well, the bayou ran about fifty yards above where it runs now—where you call the mouth of the bayou now. That is probably a slough. It is not the mouth of the bayou. It is a slough.

184 Q. In your opinion?

A. Yes, sir. Well, that is all it is.

185 Q. How do you know it is?

A. I know by the field-notes.

186 Q. That is all you know it by?

A. Yes, sir; that is as much as I want to know it, too. I
698 know it by the field-notes. There is nothing else to govern us.

187 Q. Where did you get the field-notes you speak of?

A. Sent to Washington and sent to W. E. Niblack.

188 Q. When did you get them?

A. I could not exactly tell now. I have a letter in my pocket that would tell you pretty near it.

189 Q. You may look at your letter to refresh your memory.

A. (Reading from paper.) This is March, 1872. "Enclosed I send you"—that is a letter of Walden. That is not the one. It is about the year 1870, as near as I can judge. (Referring to paper.) Yes, sir; it was 1870.

190 Q. Where was the suit between you and Garrett tried?

A. In the circuit court, Evansville, Vanderburgh county; and then we had another suit after that. They had four suits, and they were transferred to the Federal court, and they dismissed and paid the costs rather than let it go through. I will state that, too.

191 Q. Have there been any suits brought against your tenants on that land?

A. Yes, sir.

192 Q. When?

A. About three years ago.

193 Q. Where were the suits brought?

A. Here, before the squire.

194 Q. What was the result of them?

699 A. He fined my tenant $54; and I brought suit against a man for some corn there and got a judgment for $250, and I took the corn and sold it.

195 Q. You brought suit and it was tried where?

A. In Henderson county; for the same ground. Put that down, too.

196 Q. Was there a tenant of yours named Cline fined in this county?

A. Yes, sir; that is the man.

197 Q. Did he pay the fine?

A. Yes, sir; I paid that.

198 Q. Who was John Knight?

A. I did not know him.

199 Q. Is he not the man that you testified to look up and down the bayou?

A. Oh, Isaac Knight.

200 Q. Who was Isaac Knight?

A. He was a man taken by the Indians. He is dead now. I think I had him as a witness in 1855. That was the time it was determined. I could not tell you exactly whether or not he was a witness.

201 Q. What time was he taken by the Indians?

A. Well, he was taken. He was on the river in former years when the Indians were present. He was on the Ohio river and the Indians came *him* and stole him and kept him a year or two.

202 Q. What was his occupation?

700 A. Farmer, I believe. He lived in Knight Township, on the Newburg road.

203 Q. Was he taken by the Indians as late as 1850?

A. Of course not. I could not state that; that is hearsay. I just merely made mention of it.

204 Q. Did Mr. Knight have any other occupation besides that of farmer?

A. I do not know. I went to his place. I suppose he was a farmer. He lived on the highway reaching from here to Newburg. I went to his house.

205 Q. When did Mr. Knight say he was able to look up and down the bayou?

A. It was in a conversation that I had when I was trying to get him for a witness, from 1850 to 1855. The conversation took place at his house.

206 Q. Did you get him for a witness?

A. He promised to come. I could not tell whether he was a witness or not. My impression is he was a witness, but I do not know; I cannot recollect it exactly. I know he promised to come, and I think he was one of our witnesses. I am not positive about that.

207 Q. He would have been an important witness, would he not?

A. I suppose he would. I do not know how he would turn out.

208 Q. When did he say he was able to look through the
701 bayou?

A. In that conversation I told you I had in his house. Mr. Garrett told me the same thing.

209 Q. Did Mr. Garrett tell you that Mr. Knight said so?

A. No; he told me, and then told me Garrett. Mr. Garrett told me that he knew Mr. Knight had told him that he could see through the bayou.

210 Q. In other words, Mr. Knight told you and Mr. Garrett the same thing?

A. Yes, sir; that is what I mean.

211 Q. Did he tell you when he could look up the bayou?

A. No, sir. He said in the same conversation he believed that he had been told that the original Green river—the bayou was originally Green river, and the Ohio had run through it. That is what was said, that the bayou was originally Green river—that is, made part of it. I do not know whether he knew it, but he had heard some of his old people years ago tell him that.

212 Q. That is a mere matter of opinion?

A. I do not know whether it is a matter of opinion or not; I could not tell you that. He said it was so, but I do not know. It is not my opinion at all. I do not know anything about that. It looked as if it might have been.

213 Q. Did Mr. Knight think it was originally part of Green river, and that it crossed the Ohio?

702 A. No; he did not say it was, but he said he had heard it. It was before his time.

214 Q. He had heard it surmised?

A. Yes, sir; had heard it surmised by parties older. That might refer to one hundred and fifty years back; it was just in the conversation.

215 Q. What kind of a man was Mr. Knight?

A. A tall man.

216 Q. I mean as to his character.

A. Well, he was good; he had a good reputation.

217 Q. Was he an intelligent man?

A. I suppose he was. I think he was an intelligent man. I do not know about his education; I do not suppose he had much education, but he was an intelligent man, nevertheless.

218 Q. How old was he when he talked to you this way?

A. Probably seventy-five or eighty years.

219 Q. Was he well preserved at that time?

A. Tolerably well preserved.

220 Q. Do you mean that he had somewhat failed then?

A. Well, he was—I do not know. Of course, when men get that age they have failed, but he was in good keeping for the age.

Re-examination.

Questions by Hon. J. PROCTOR KNOTT:

221 Q. You spoke of a pool or pond of water near where you put in a crossing of which you have testified.

703 A. Yes, sir; that was north of that.

222 Q. Just wait until you hear my question and then answer it. Was that crossing through the middle of that pool or at either end of it?

A. No; it did not touch either pool. There was a pool at what is the present neck of the bayou now—a pool there and a pool above it—and it was a road between those pools. Then there was a drain there that I say was connected with the bayou.

223 Q. Just answer my questions as I ask them.

A. Very well.

224 Q. You located the bridge between those two pools?

A. Yes, sir; that is, in parallel lines. The two pools—one was above and the other was pretty near opposite. The pool above was between the roads, as has been described, and this pool was right north of the bridge—right in the neck of the present bayou. There was no crossing in that pool at all.

225 Q. Doctor, just answer my questions as I ask them, and do not go on with a long speech; I want to get this thing clearly. How high was the ground where the bottom of this bridge rested—above or below, or was it on a level with the general level of the bayou as it then existed?

704 A. About the general level of the bayou as it existed—the bayou proper. It was higher there than at any other part of the bayou—except at the head of the bayou.

226 Q. You selected the highest place at the head of the bayou upon which to build this box or bridge?

A. That is right; yes, sir.

227 Q. How high was the box?

A. The box was four and a half or five feet. The bridge was about sixteen feet wide—sixteen feet plank—and probably thirty feet long. That is about the dimensions of the bridge.

228 Q. The bridge was sixteen feet wide?

A. Sixteen feet wide.

229 Q. And thirty feet long?

A. Thirty feet long.

230 Q. And four feet high?

A. Four feet and a half or five feet high, and then a picket fence put on top of that.

231 Q. So when the water was running through the slough from

one end to the other it would come up to the bottom of the box at the time you put it there?

A. Oh, yes, sir; it would do that, the headwater. At the headwater there it would be a little higher than the backwater, probably four to six inches, or maybe fix [five] or six. There would be that much difference in the headwater and the backwater. As the bayou has changed it has been making up. It used to go
705 lower down than now. It used to go very near this bridge.

232 Q. Did you know Mr. Luchenheimer, the publisher of the lithographic map from which the tracing marked Exhibit "Z" was taken?

A. Yes, sir.

233 Q. Is he dead or alive?

A. He is dead.

234 Q. How long has he been dead?

A. I could not tell you that; three to five years; I could not tell; I could tell at home from my dates.

235 Q. Has or has not this island bayou been navigated by steamboats and other craft from one end to the other, within your knowledge?

A. Yes, sir; I saw a good many boats—the Louisa going in there and the Spottsville go through and several tug-boats; I do not know the names; one was the La Masco and the Elizabeth; I have seen them go up the bayou.

236 Q. In what years?

A. Well, I think in the year about 1860. I could not tell for one or two years, but I think in 1860. I have seen them several times go up there, and I think in 1860—about the time of the war. I could not tell exactly the year. I have seen them several times when the water was about medium way of the bayou.

706 237 Q. What was the stage of water?

A. About middle way up the bank. Well, probably, six or eight feet deep in the bayou—the highest places.

238 Q. But not over the surrounding country on either side?

A. No, sir; not over the surrounding country on either side. People loaded flat-boats there and shoved them down, too.

Recross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

239 Q. What was the first name of Mr. Luchenheimer, that you stated you knew?

A. Jacob, I think. No, Frederick. That is what is the matter—I am mistaken in that. I knew them both; the other one was in the clerk's office; he is dead too. That is right—it was Frederick; that is what is the matter. Jacob, I was not much acquainted with him, but I knew him, and know he is dead.

240 Q. What was the business of Jacob Luchenheimer?

A. He had an interest here in real estate, but I do not know much about him. I think he was clerk.

241 Q. You have stated he was a real estate agent?

A. Yes, sir; and, I think, clerk of the court.

242 Q. Where was his office?

A. In the court-house.

243 Q. I mean where was his office?

A. I think his office was in the court-house when he was clerk.

707 244 Q. I am speaking of his other office?

A. I do not know.

245 Q. In what city was it?

A. Evansville.

246 Q. Where did you know Jacob Luchenheimer?

A. When he was alive.

247 Q. When was that?

A. I could not tell you the time; he was dead long before his brother died.

248 Q. How long ago was that?

A. I could not tell you exactly.

249 Q. Where was he engaged in selling real estate?

A. Well, I see it is stated there he was a real estate agent, but I am pretty well satisfied he was clerk of the circuit court. I knew him then. That was his occupation at one time.

250 Q. Do you know when he was clerk of the circuit court?

A. No, sir; I could not tell you that.

251 Q. Do you know whether it was before or after 1857?

A. I could not tell. I think it was probably before—probably before. I would not be positive about that.

252 Q. At what season of the year did you see steamboats go up and down the bayou?

A. In the fall of the year and in the spring of the year.

708 253 Q. And what months in the spring and the fall of the year?

A. I could not hardly tell that way, only they shipped corn along in November.

254 Q. About how much water was there in the Ohio river at the time these steamboats went up and down the bayou?

A. I could not tell you that. It was six or eight feet in the bayou.

255 Q. How much water was there in the river, according to your best judgment?

A. It is all guess-work; we had no water-marks. I suppose, twenty-five or thirty feet; probably thirty feet; I would guess thirty feet.

Question by Mr. KNOTT:

256 Q. Was it higher than this last rise?

A. No. Well, a little higher. The last rise, I think, was twenty-six feet. It is all guess-work heretofore. We had no gauge.

And further the witness saith not.

(Signature waived.)

709 WILLIAM HENRY STANSBERRY, recalled for further examination, testified as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

197 Q. Did you observe the rise of the water in the bayou and in the river in the last rise of the Ohio river?

A. Well, I do not know how far it ran up.

198 Q. Did you observe the rise—did you notice it—in the river?

A. Yes, sir. I was right on the river bank.

199 Q. State how much the water lacked of running in at the head of the bayou at the head of the island.

A. I was not up there to see it, but just in my best judgment I think it would take about four feet—three and a half or four feet.

200 Q. On what is your judgment based?

A. Well, by the tree there that I have always had there. It always run through the bayou, cutting around that tree; but the bayou makes up and changes there all the time, until sometimes it takes more water to get in there than I would think.

201 Q. Did you notice the water around the tree that you are thinking of?

A. It was not. Oh, yes, sir; I have noticed it.

202 Q. Did you notice it on this last rise?

A. No; it was not about it.

710 203 Q. Did you notice the water in the neighborhood of that tree?

A. Oh, yes, sir; I think it would take about four feet to get around it.

204 Q. And do you mean when the water got to that tree it would then run in at the head of the bayou?

A. Yes, sir; up above the tree.

205 Q. And, according to your best judgment, it lacked from three and a half to four feet from running in at the head of the island?

A. Yes, sir.

206 Q. How long has it been since you observed that?

A. At the time of the water. We were getting kind of uneasy about the water, and we were watching it.

207 Q. Tell about how long it has been since that time.

A. Well, on the last rise? I do not remember how long that has been—the last rise we had in the river.

208 Q. Two or three weeks ago, was it?

A. Yes, sir.

209 Q. Do you know what the rise in the river was this last time, above low-water mark?

A. No, sir.

And further the witness saith not.

(Signature waived.)

Whereupon the further taking of these depositions was adjourned until 2 o'clock p. m. of said day.

711 2 O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The taking of the depositions was resumed as follows:

PARVIN DE GARIS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. State your name.

A. Parvin De Garis.

2 Q. What is your age?

A. Thirty-three years.

3 Q. What is your residence?

A. Evansville.

4 Q. State whether or not you keep any official record of the stages of the water in the Ohio river at Evansville.

A. I do.

5 Q. Do you make any record of that?

A. Yes, sir.

6 Q. Have you any record of the greatest height attained by the water on the recent rise, of two or three weeks since?

A. I have no official report of the highest stage reached, but I can tell you the stage of the water on the day it reached the
712 highest—on the morning of the day it reached the highest. It reached the highest during the evening or during the night some time.

7 Q. How often do you take those observations?

A. I take them for the Government every morning, and then for the newspaper in the evening.

8 Q. What was the highest stage of water of which you took any observation during that rise, and when was it?

A. In the morning, on the 29th of August, it was twenty-five feet—that was in the morning—and then in the evening it was twenty-five and three-tenths.

9 Q. Upon what gauge was that?

A. That was the Government water gauge, here at the foot of Main street, in Evansville.

Question by Mr. KUMLER:

10 Q. Is that three-tenths of a foot?

A. Yes, sir; twenty-five and three-tenths feet. I send a report every month to Colonel Merrill, which I take every morning. Every evening I take a report for the Courier for the next morning's paper. It might have reached even higher than twenty-five and three-tenths

during the night, and then it commenced falling. It commenced falling either that night or the next morning.

Question by Mr. CUNNINGHAM:

11 Q. It could not have been much above that, could it?

713 A. No, sir; could not have been much, because it was rising slow, only three-tenths from morning until about six or seven o'clock in the evening.

And further the witness saith not.
(Signature waived.)

Mr. KNOTT: We offer in evidence now, to be attached to the testimony, the two tracing maps, with the papers attached, marked as Exhibits "X" and "W" by the notary.

Mr. SNOW: All objections to the papers marked as Exhibits "X" and "W," on account of their being mere copies, are waived; other exceptions, if any, being reserved.

Mr. KNOTT: That is right.

The papers above referred to being in the words and figures following, to wit:

714 I hereby certify that the map hereto attached and marked "B" is a true copy, made by tracing, of a map belonging to the Library of Congress and entitled "Map No. 11," which appears on page 77 of a book entitled "The Navigator, containing directions for navigating the Monongahela, Alleghany, Ohio, and Mississippi rivers, with an ample account of these much-admired waters from the head of the former to the mouth of the latter, and a concise description of their towns, villages, harbours, settlements, etc., with accurate maps of the Ohio and Mississippi. Sixth edition. Improved and enlarged. Pittsburgh. Published by Zadok Cramer, 1808."

And I further certify that on page 75 of said work appears a descriptive statement referring to the before-mentioned map 11, page 77, of which statement the following is a true copy:

Green River, Left Shore.

"This is a large water of Kentucky, and is navigable, with a gentle current, for about 150 miles. It rises in Lincoln county, and is 200 yards wide at its mouth."

Green River Islands, Nos. 75 and 76.

"Here are two islands opposite each other, one of which is six miles long and has six or eight families settled on it; channel left side of both."

715 Witness my hand this 21st day of August, A. D. 1888.

A. R. SPAFFORD.

Exhibit X.

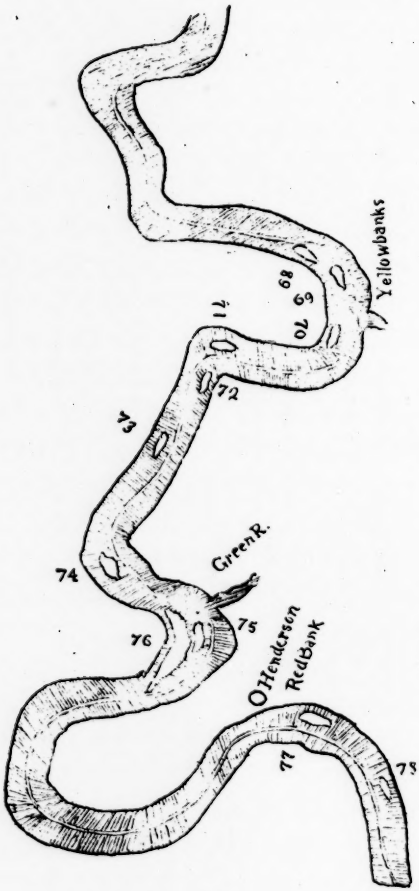


Exhibit X
Sept. 12th, 1888
H. T. Notary Public.

Exhibit W.

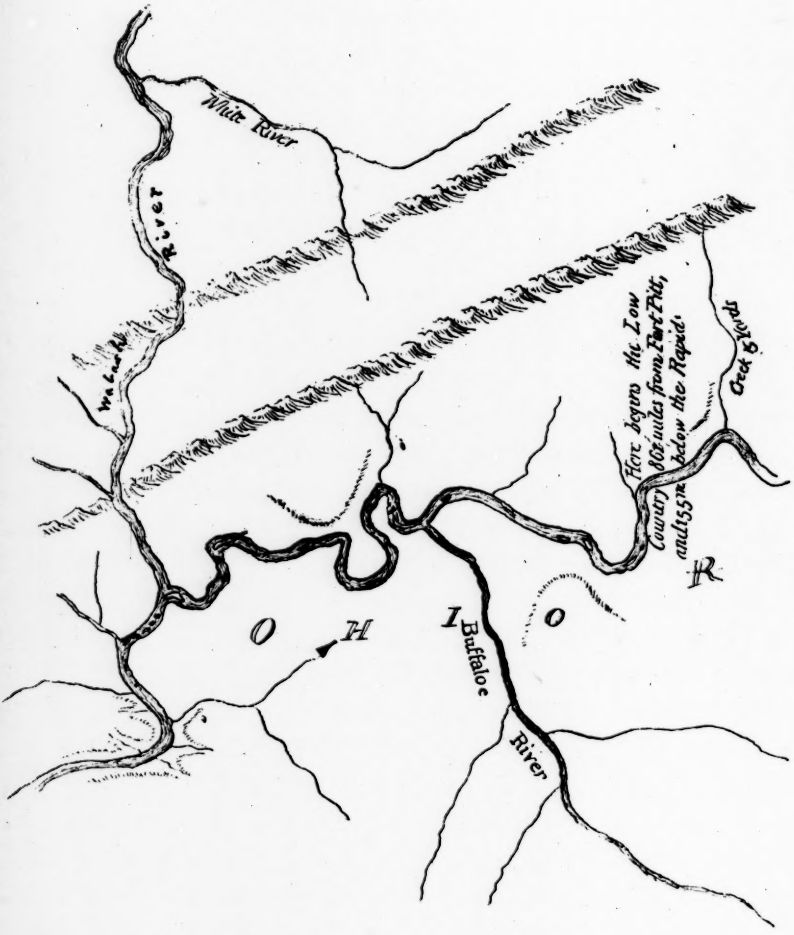


Exhibit W.
Sept. 12, 1888
H. J. Notary Public

CITY OF WASHINGTON, *District of Columbia,* } *sct:*

Before me, Charles B. Beall, a notary public in and for the District of Columbia, personally appeared Ainsworth R. Spafford and acknowledged the foregoing instrument of writing to be his certificate for the purpose therein named.

[SEAL.] Witness my hand and notarial seal this 21st day of August, A. D. 1888.

CHAS. B. BEALL,
Notary Public, Dist. Columbia.

(Here follows diagram marked Exhibit X.)

716 I hereby certify that the map hereto attached and marked "A" is a true copy, made by tracing, of a map belonging to the Library of Congress and entitled "A new map of the western parts of Virginia, Pennsylvania, Maryland, and North Carolina, comprehending the River Ohio and all the rivers which fall into it; part of the River Mississippi, the whole of the Illinois river, Lake Erie, part of the Lakes Huron, Michigan, etc., and all the country bordering on these lakes and rivers. By Thos. Hutchins, captain in the 60th Regiment of Foot. London. Published, according to act of Parliament, November 1, 1778, by T. Hutchins."

And I further certify that said map has been in this library for upwards of twenty years, having been acquired in the year 1866.

Witness my hand this 21st day of August, A. D. 1888.

[SEAL.] A. R. SPAFFORD.

CITY OF WASHINGTON, *District of Columbia:*

Before me, Chas. B. Beall, a notary public in and for the District of Columbia, personally appeared Ainsworth R. Spafford, and acknowledged the foregoing instrument of writing to be his certificate for the purpose therein named.

Witness my hand and notarial seal this 21st day of August, A. D. 1888.

[SEAL.] CHAS. B. BEALL.

(Here follows diagram marked Exhibit W.)

717 It is stipulated that the further taking of depositions in this cause shall be adjourned to the office of R. H. Cunningham, Esq., in the city of Henderson, Kentucky, where the same shall be resumed and continued in pursuance of the stipulations heretofore entered into by counsel here, and the witnesses may be sworn by any notary public or other officer authorized by the laws of Kentucky to administer oaths, and their testimony taken down by Mr. Harold Taylor, and that his certificate that the witnesses were so sworn in his presence and by what officer, that the evidence was taken down

by him, and that the same is correct shall be all the authentication that shall be required of any depositions taken.

Evansville, Ind., September 12th, 1888.

McDONALD, BUTLER & SNOW,
D. B. KUMLER,
Solicitors for Complainant.
P. W. HARDEN, *Att'y Gen'l,*
J. PROCTOR KNOTT,
Counsel for Respondent.

718 Whereupon, at the hour of three o'clock p. m., the further taking of these depositions was adjourned until to-morrow, Thursday, September 13th, 1888, at nine o'clock a. m., to be resumed at the office of R. H. Cunningham, Esq., in the city of Henderson and State of Kentucky.

719 STATE OF INDIANA, *Vanderburgh County:*

I, Harold Taylor, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of Indiana, hereby certify that the above-named Franklin Sours, William Wells, Samuel Butler, Lemuel Stansberry, William L. Stansberry, Dr. G. W. Yates, and Parvin De Garis, witnesses, were first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said depositions were reduced to writing by me; that the complainant was present by its counsel, Alpheus H. Snow, Esq., and Daniel B. Kumler, Esq., and that said depositions were taken at the office of the clerk of the United States circuit court, in the city of Evansville, county of Vanderburgh, and State of Indiana, on the 11th, 12th, 13th, and 14th days of September, A. D. 1888, between the hours of eight o'clock a. m. and six o'clock p. m. of said days, and that the several exhibits herein appearing were by me duly attached hereto.

Seal Harold Taylor, Notary Public, Indiana.

In testimony whereof I have hereunto set my hand and notarial seal this 1st day of December, A. D. 1888.

HAROLD TAYLOR, *Notary Public.*

720 Depositions of Phillip B. Matthews, Samuel E. King, William Beach, John W. Beach, Robert Scroggins, N. Perry Robinson, and Henry M. Ball, witnesses produced and sworn before me by R. H. Cunningham, Esq., a notary public for the State of Kentucky and an officer authorized to take depositions by the laws of the State of Kentucky, at Henderson, in the county of Henderson, State of Kentucky, at the law office of R. H. Cunningham, Esq., in said city of Henderson, county of Henderson, and State of Kentucky, on the 13th and 14th days of September, A. D. 1888, pursuant to the agreement of counsel heretofore mentioned and set out in those proceedings, at Evansville, Indiana, and dated September 12th, 1888.

These depositions are taken on the part of the respondent in a

certain action now pending in the Supreme Court of the United States, wherein The State of Indiana is complainant and The State of Kentucky is respondent.

721 HENDERSON, KENTUCKY,
THURSDAY, *September 13th*, 1888—9 o'clock a. m.

The parties met, pursuant to adjournment, at the office of R. H. Cunningham, Esq.

Present: The same as on yesterday.

The taking of the depositions was resumed, as follows:

PHILLIP B. MATTHEWS, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name?

A. Phillip B. Matthews.

2 Q. What is your age?

A. I am in my 85- year.

3 Q. What is your residence?

A. Henderson.

4 Q. How long have you resided here?

A. I came here sixty five or six years ago, but for a few years I was engaged in North and South Carolina. It is about sixty-five years last January since I first came here. It has been my home now regularly for about fifty years.

5 Q. Are you acquainted with the tract of land known as
722 Green River Island?

A. I know of it.

6 Q. Have you ever passed through the bayou between that island and the State of Indiana, on a steamboat?

A. I have.

7 Q. How often have you done so?

A. The first trip I ever made—I did business in the year 1844 in Cloverport, and I went up the last of December, 1843, and I went up through that slough. I made several trips down that year from Henderson, but I don't remember how often I passed through, but I think once or twice afterwards I passed through that slough; but I remember the first time in December, 1843, I passed through there.

8 Q. How were you traveling then?

A. On a steamboat.

9 Q. What was the size and character of the boat?

A. I do not know what I have passed on—whether one or two boats. I recollect the first trip, I think, was on the Fawn. The boats I passed on seemed to get up without any trouble.

10 Q. Did the boat have any trouble in getting through?

A. None in the world.

11 Q. What was the stage of water in the Ohio river?

A. About medium for that season of the year—in Decem-
723 ber; it was not up at all, but in a good boating condition.

12 Q. Was the water in the sloughs or over any of the banks?

A. Oh, no, sir; I saw no water except in the slough; the water was not out on the farms at all. It was just a medium stage of water.

13 Q. Do you know whether it was customary for boats then to pass through the bayou?

A. I think it was very common to start out a little above Evansville and run up the slough. I think a great many boats ran through there at that time.

14 Q. For how many years after 1843 did you go through there, from time to time?

A. I do not recollect ever going through after 1844; I do not remember passing that way after 1844. I passed several times up that year up to winter, and I think perhaps as often as two or three times, and once I know I went up that way. I cannot say how often, but I went up frequently that year—passed up and down the river several times. There was no trouble in boats getting up then. Since then I think but few have gone that way. It has not been done for some time.

15 Q. Do you know anything of any changes that have occurred in that bayou since then?

A. No, sir; only that I noticed in going up the river
724 it seems to have filled up at the upper end; the mouth of it has been filled with drift-wood and sand, and I suppose has stopped the passage of the slough. I do not know anything about it at all, only what I could see from the boat in traveling up. I have not gone up the river for a great many years.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

16 Q. I understand you to say that all you know about Green River Island you have learned from passing by the island in steamers; is that so?

A. Yes, sir.

27 Q. About how much water was there in the Ohio river at the time you passed through the bayou in a steamer?

A. About common for that time; what is usual in the winter season.

18 Q. How many feet above low-water mark?

A. I could not tell.

19 Q. Thirty feet above low-water mark, was it?

A. Oh, no.

20 Q. Was it twenty-five feet above low-water mark?

A. No, sir.

21 Q. Was it twenty feet above low-water mark?

A. The difference between low water in winter and sum-

725 mer, I suppose, might be eight or ten feet. That is a thing I never paid much attention to. I suppose the river generally is eight or ten feet higher in winter than in summer.

22 Q. Do you mean to say that any time you went through there in winter the river was only eight or ten feet higher than in the summer?

A. Only common tide.

23 Q. Would you swear there was not thirty feet in the river at the time you went through the bayou on a steamboat?

A. I do not know what there was in the river. It seemed to be about the usual stage in the river for that season of the year.

24 Q. Are you familiar with the channel along there?

A. No, sir; not much. I never have been a great deal on the river.

25 Q. How much water was there in the bayou at the time you went up it in the steamer?

A. Plenty for the boat to get along without trouble.

26 Q. How much would the boat draw?

A. I do not know.

27 Q. How much would you judge it would draw?

A. Seven or eight feet, or six or seven, or five or six. I do not know what; I know so little about the boats or about their condition and what the boats require.

28 Q. And you do not know how much water there was in the Ohio river at the time you went through the bayou?

726 A. No, sir; only just a common tide for that season of the year.

29 Q. Did you ever see that bayou in the summer time?

A. I do not recollect that I ever did. I never was on that Green River Island in my life, and, except in passing through the slough, it is a place I never go through. I go to Evansville occasionally, but as to the island or its condition I know very little. I have seen it in passing, and there seemed to be some mighty good land there.

And further the witness saith not.

(Signature waived.)

SAMUEL E. KING, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name and age?

A. Samuel E. King; I will be sixty-two October 13th.

2 Q. Where do you live?

A. I live in this county, twelve miles south of Henderson.

3 Q. Did you ever live near or on Green River Island, in this county?

727 A. I lived near it, right opposite Evansville, on this side of the river.

4 Q. When did you first live there, and for how long a time?

A. I do not remember the year that I moved on the river; it was somewhere in the '30's, between 1835 and 1837; somewhere along there.

5 Q. How long did you live there?

A. I lived there until 1847.

6 Q. Did you ever live there after that time?

A. Yes, sir; I was there, off and on, for two years after that time. I moved from the river and went back again.

7 Q. Did you know the bayou between Green River Island and the Indiana shore?

A. Yes, sir.

8 Q. When did you first know that?

A. I think it was in—about 1837; somewhere along there. I was there some little time before ever I knew the bayou—that is, if I understand you. You are speaking of what we termed the chute or what we call the bayou. There is what we call the bayou there, and then the Green river chute comes down.

9 Q. Well, I refer to what is called the bayou, between the island and the Indiana shore, from one end to the other of the island.

A. Yes, sir.

728 10 Q. Was that called the bayou or chute?

A. Well, the boatmen usually called it chute. They generally called it the tow-head chute, and the Green River Island chute always went by that name.

11 Q. At your first recollection what was the condition of that bayou as to water?

A. Generally pretty good water in it most of the season. In low water there was not very much passing down through it.

12 Q. Would that go dry, at your earliest recollection, at any season of the year?

A. No, sir.

13 Q. Was there or not a continuous stream of water flowing through that bayou from end to end, all the year around?

A. That is my recollection.

14 Q. Have you ever known steamboats to pass through it?

A. Yes, sir.

15 Q. What was the condition of the water when you knew them to pass through?

A. It seemed to be pretty good for small boats.

16 Q. Have you known them to go through except when there was a flood in the river?

A. Oh, yes, sir; in an ordinary stage of water they passed through there.

17 Q. Did you ever pass through there yourself on a steamboat?

729 A. Yes, sir.

18 Q. When did you first go through there and on what sort of a boat?

A. I think it was about 1840 that I went through there.

19 Q. On what sort of a boat was it?

A. On what we called a keel boat at that time.

20 Q. Was that a steamboat?

A. No, sir.

21 Q. How large was that boat?

A. I do not remember; they were different lengths; some small, some 50, and others onto a hundred feet, I suppose, in length—different sizes.

22 Q. How much water would your boat draw?

A. I should judge it would draw some six or eight feet; six feet at least, when loaded.

23 Q. At that time what was the stage of water in the river?

A. A good boating stage.

24 Q. Was it regarded as high water?

A. No, sir.

25 Q. Had the water gotten into the sloughs?

A. No, sir.

26 Q. Has that bayou or not filled up, in your recollection?

A. Yes, sir; filled up considerably.

27 Q. About what time did it fill up so that boats could not run through in an ordinary stage of water?

730 A. I do not remember the year particularly in regard to that. I think it was somewhere near 1843. The impression on my memory was this, that considerable drift stopped the boats from going through, and it was proposed to clear it out, but there was some objection made, but by who I do not remember.

28 Q. Where were you living then?

A. Right across the river from Evansville.

29 Q. What were you and your father then engaged in doing?

A. Farming principally.

30 Q. Did either of you ever keep a ferry at Evansville?

A. Yes, sir; my father run a ferry there from the time he went there until the time we left.

31 Q. Were you much about the river?

A. Pretty much all the time during the day.

32 Q. What was the average width of the stream through the bayou at low-water mark when you first remember it?

A. I never noticed it particularly, but a boat could get along very well in it—a small boat.

33 Q. Do you remember the making of the bar in front of Evansville?

A. Yes, sir.

34 Q. Tell about what time it began, and all that you remember about it and the cause of it.

731 A. Well, the cause of it we supposed was from the washing of the Kentucky bank there over that way (indicating), and the giving away of the bank above; that was the strong supposition.

35 Q. About what time was that?

A. The bar above; that is the place you speak of?

36 Q. No; I mean the bar at Evansville.

A. Well, the river makes a turn from the tow-head—makes a gradual turn around to Evansville. This bar, accumulating there, extended on down, and when the chute filled up above—you speak of it as the bayou—then the bar extended on down to Evansville gradually—every rise in the river. The number of years I do not remember. I do not remember what time it commenced.

37 Q. Was that bar formed onto the island that extended down in front of Evansville?

A. Yes, sir; that is where it originated.

38 Q. Did the filling up of the bayou have any effect upon that bar?

A. It seemed to increase it. Whenever the current stops in the bayou the bar — suddenly extended.

39 Q. When did you last observe the bayou between the island and the Indiana shore?

A. It was while I was living there and could see it.

40 Q. When was the last time you observed the bayou?

A. About 1848.

41 Q. How much, in your judgment, had that bayou filled in between that time and your first recollection of it?

732 A. I could not state that fact. It had filled in a good deal up at the mouth, where it came in.

42 Q. Near the head of the island, do you mean?

A. Yes, sir.

43 Q. Had it filled more there than it had below?

A. Yes, sir.

44 Q. What, in your judgment, caused it to fill there?

A. It was caused from the drifts lodging along where the timber had fallen.

45 Q. Had the mouth or the head of the bayou, near the head of the island, shifted any between your first recollection of it and the last time you saw it?

A. I think it had.

46 Q. Had it gone up or down?

A. I do not remember particularly about that. The fact that drifts formed on one side or the other of it and created a fill —. I think it was on the upper side of the chute, if I remember right, and where that drift was it seemed to fill mostly.

47 Q. Then which was making—the island or the Indiana shore?

A. The island seemed to be making. Do you have reference to the head of the island or the island in the river?

48 Q. I mean the head of the island.

A. I do not remember particularly about that. I think, on this Indiana side it seem- to be filling from the fact that the drift lodged on that side.

733 49 Q. Where was the head of the island at your first recollection?

A. Right opposite the mouth of Green river.

50 Q. Do you know where the Aikens place, in Knight township, Indiana, is?

A. On the Ohio river?

51 Q. Yes, sir.

A. Yes, sir; I do know.

52 Q. Did you ever know the island to extend up as far as that place?

A. No, sir; I never did.

53 Q. Do you know what is called Buck Island, in the bayou?

A. No recollection of it.

54 Q. Were there islands in the bayou, in your recollection—small islands?

A. It seems there was a little offset; from what cause I don't know. I don't know whether it was termed an island or not. I don't remember whether it was termed an island. I could not say.

55 Q. How was the bayou crossed from Indiana to the island at your first recollection?

A. Ordinary ferry-boats; hand-boats, we called them.

56 Q. Could it then be crossed at any place on dry land?

A. Not when I first became acquainted with it.

57 Q. Could it be crossed on dry land in low water in the Ohio river?

734 A. I could not say. I was not up there only during a boating stage.

58 Q. In all your acquaintance with it, where did the residents on each side regard the State line between Kentucky and Indiana as being?

A. I do not remember. There were but very little cleared land along on that place at that time. There were farms there.

59 Q. In which State was the island regarded as being?

A. Kentucky.

60 Q. Up to what time did steamboats commonly run through that bayou in an ordinary stage of water?

A. It was along in the fall and from that up to late spring.

61 Q. I mean what year.

A. I think it was in 1843, to the best of my recollection.

62 Q. Did you ever go through there in a steamboat?

A. It seems to me like I did. I went on those barges, those coal barges, frequently, but I do not remember about the steamboats particularly.

63 Q. Have you or not seen steamboats go through there?

A. Oh, yes, sir; they were in full view whenever they started through, and they were in full view every day.

64 Q. Has Green River Island, on the south side, been
735 making or washing away, in your recollection, say from the tow-head down?

A. Well, that island has been making.

65 Q. Has the Kentucky shore opposite been making or washing away?

A. The island on the Kentucky side?

66 Q. No; the Kentucky shore opposite the island, has that been making?

A. That island? It has been making.

67 Q. But I say the Kentucky shore opposite the island?

A. It has been washing.

68 Q. If you have ever heard from the old settlers there, what did they say about what the bayou was?

A. My understanding from them was that that was the line between Indiana and Kentucky.

69 Q. I mean, as to that, what was the bayou itself—what was it supposed formerly to have been?

A. Well, it has been so long——

70 Q. (Interrupting). Was there any tradition about the former course of the Ohio river?

A. Well, there was a good deal said about it, but I do not know that I could state that, probably.

71 Q. Do you mean that you do not now remember what they said about it?

A. No, sir; I do not.

72 Q. Do you remember hearing any of them say where Green river had formerly run?

736 A. Nothing more than this. That used to be the way the river run down this chute that I speak of as the bayou.

73 Q. Explain a little more fully your meaning, please.

A. Well, the head of this island that we are speaking of—that the river used to run through there.

74 Q. Green river, do you mean?

A. Well, the two rivers combined.

75 Q. They ran through the bayou?

A. Yes, sir; that was the supposition of some.

76 Q. Are you acquainted with the land on the Indiana shore back a little distance from the river?

A. Some little.

77 Q. Are there any high banks back some distance from the river?

A. Yes, sir.

78 Q. About how far?

A. The distance I could not state. It commenced just at the upper end of the State at that time and came quartering back to what was called the bayou or slough and forms considerable bottom in this place where we were just speaking of. How far it extends I could not name.

79 Q. Had those banks, in your earliest recollection, any appearance of having been the original banks of the river?

A. It looked so to me.

737 80 Q. At your first recollection, what was the course of the bayou as compared to the course of Green river for some distance above its mouth?

A. That is, the bayou?

81 Q. Yes, sir.

A. Well, it was pretty much in that direction, the mouth of Green river.

82 Q. Would or not a line extending down Green river for some distance from above its mouth strike the course of the bayou?

A. Of Green river?

83 Q. Yes, sir.

A. I think it would, in my judgment.

84 Q. Do you know whether the mouth of Green river has shifted any since your earliest recollection?

A. None since my recollection. The mouth of Green river you have reference to?

85 Q. Yes, sir.

A. No, sir; not since my recollection.

86 Q. Referring to the bar which you say ran from the island down in front of Evansville, where, in your recollection, was the best channel in the Ohio river; was it between Evansville and the bar or between the bar and the Kentucky shore?

A. Well, on the Evansville shore, right opposite Evansville, up until you passed—where this bayou came in; for some distance then they quartered across to the Kentucky shore on the main
738 channel. That is the way the channel used to run.

87 Q. Do you mean they quartered across from the head of the bayou?

A. Yes, sir; from Evansville, after you passed there, and they ran across quartering there. You see the channel changed whenever this bayou filled—that is, it commenced filling, and then the channel changed, commenced to change as the bar projected on that island, and came on down the river. The channel still worked down the river, and as the bar gradually extended in front of Evansville it still throwed them quartering across in the same direction, towards the Kentucky shore. We tended the ferry there, and we could see as the channel worked, and the bar extended way below Main street considerably while I was there.

88 Q. Look at the paper now shown you, marked Exhibit "Z." This line (indicating) marks the section lines between sections 14 and 15, what is known as the Aikens place being just to the right of that line and on the river.

Mr. Snow: We object to that; that is not stated on the map, and that map is so incorrect in so many other ways that it might mislead the witness.

89 Q. If the Aikens place be just to the right of that line
739 and on the river, say whether the island, in your recollection, was approximately as represented there.

A. This is the Indiana shore here (indicating)?

90 Q. Yes, sir; you are looking at it from the Kentucky side.

A. Yes, sir; I understand. Here is the mouth of the island (indicating), if I understand aright, and right above here is the Aikens farm?

91 Q. No; here is the Aikens farm, at the southwest corner of section 14.

A. That does not come out to the river. I understand this (indicating) is the Ohio river?

92 Q. Yes, sir; the blue line is the Ohio river.

A. I do not know that I can say anything about this line across here (indicating). I can only tell you on the bank of the river.

93 Q. Now look at the same section, 14, and say whether there has been much accretion, in your recollection, to the land along there—much growth to it.

A. I could not tell as to that. I was not frequently there.

94 Q. You cannot state about that?

A. No, sir. I only knew where they lived there, and they had a pretty extensive wood-yard—I remember that—on the Ohio river.

95 Q. Was the mouth of the slough changed any, in your
740 recollection; was it either getting up above or below the line where it had formerly been?

Mr. SNOW: What line?

Mr. CUNNINGHAM: The line of the chute or bayou.

A. I saw no change, only it was filling, to the best of my recollection.

96 Q. Was the course of the bayou changed any?

A. I could not say that it was at that time.

97 Q. You say you have not observed it since 1848?

A. 1848. I was not up there; only here at the mouth.

98 Q. I think I asked you whether the head of the island was making or washing away at the time you observed it?

A. It was making.

99 Q. Was it more up the river or washing off?

A. It was filling up.

100 Q. Going up the river?

A. Yes, sir; filling up.

101 Q. Where did the residents of Green River Island vote and pay their taxes when you were acquainted with it?

A. Kentucky.

102 Q. In what county?

A. Henderson.

103 Q. Did you ever know any parties to be arrested on the island by Kentucky authorities?

A. Yes, sir.

741 104 Q. Did you ever know any to be arrested there by Indiana officers, on the island?

A. Only on certain occasions.

105 Q. Tell what the occasion was.

A. Well, suppose a man did a crime in Evansville and got away, and the officers were after him, they followed him there and took him wherever they found him.

106 Q. Did you ever know any such men to be arrested by Indiana officers on the island?

A. I have no recollection of any.

107 Q. You have no recollection of any?

A. No, sir.

108 Q. Have you any recollection of any parties charged with crime in Indiana getting into the bayou and there stopping?

A. Well, if you will let me get at it, I can tell you all about it.

109 Q. Tell us all you know about it.

A. If a man committed a crime in Evansville or Indiana, you might say, and of course he made his escape up there, and he frequently got across over to Henderson, he was captured here. Wherever they could make their escape, it was the same way with Kentucky. If they got through they followed him up and the authorities brought him back to the proper place. That was often the case in that day, to my recollection.

742 110 Q. Do you mean that you knew Indiana officers to arrest men in Henderson?

A. Yes, sir; by authority. Of course, they came here and found their man and they took him.

111 Q. Who would take him?

A. The sheriff.

112 Q. The Indiana or Kentucky officers?

A. The sheriff of Indiana came and got him. I do not know who arrested him. He came here and took him back.

113 Q. You mean in the city of Henderson?

A. In the city of Henderson? Yes, sir.

114 Q. Who was that?

A. Wasn't there a sheriff there by the name of Gilbert?

115 Q. The sheriff of Vanderburgh county, do you mean?

A. I will tell the circumstances if you will allow me that privilege.

116 Q. Yes, sir; you may state them.

A. He killed a man in a blacksmith shop. They could not take him in Evansville, or did not do it, and he came to the river and crossed over and came to Henderson and got here with a negro. The officer came down—the sheriff did—and ordered him to surrender and he did not do it, and he shot through the door and shot him. Stockwell; that was the man. They took him back, across, over the river. That was often done there.

743 117 Q. How long ago was that, Mr. King?

A. I do not remember the year; it was some time in the '40's. A man by the name of Munnell stopped him—Lon Stockwell, they always called him.

118 Q. At your earliest recollection, was there, at all seasons of the year, so much water in the bayou as to require a ferry-boat to cross it?

A. Yes, sir; it was, in my recollection.

Whereupon, at 12.30 o'clock p. m., the further taking of these depositions was adjourned until 1.30 o'clock p. m. of said day.

1.30 O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The taking of depositions was resumed as follows:

The examination of the said SAMUEL E. KING being resumed as as follows:

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

119 Q. Did I understand you to state that you never have seen Green River Island except at times when there was a good boating stage of water?

A. I saw it every day.

120 Q. Then, what was the condition of the bayou—by the
744 bayou I mean the bayou between Green River Island and the Indiana shore—what was the condition of that bayou in summer, in times of lowest water in the Ohio river, in your earliest recollection?

A. There seems to be water passing through there all the season, but it was not sufficient for steamboats to go through.

121 Q. Did you ever go up and down the bayou in the summer?

A. Yes, sir; in skiffs.

122 Q. In skiffs?

A. Yes, sir.

123 Q. In the middle of the summer?

A. The middle of the summer. Now, that was early; that was in 1830.

124 Q. How shallow were the shallowest places in the bayou you ever saw?

A. Well, little shoals along frequently like the bar in front—in the river in front of Evansville, for instance.

125 Q. At the time you first knew it were there any crossings over that bayou?

A. Yes, sir.

126 Q. What kind of crossings?

A. What we called hand-boats—a ferry-boat.

127 Q. Did you ever know of any crossings on logs or dry land over that bayou?

A. No, sir; not while I was passing through.

745 128 Q. Did you ever hear of the people who lived on Green River Island coming down to Evansville with their teams, or when did you first hear of that?

A. Frequently. They went to market if they raised any produce there. They carried it across on these boats and made their way to Evansville.

129 Q. They brought it down to the bayou in wagons and ferried it across?

A. Ferried across this bayou.

130 Q. Did you ever see the Green River Island bayou at a time of extreme low water in the Ohio river?

A. I seen it every day at the mouth where it emptied.

131 Q. Did you see the bayou every day?

A. Oh, I did not go up it.

132 Q. What occasion did you have to go up the bayou?

A. Frequently towed boats up through there.

133 Q. At what season of the year did you tow boats up through there?

A. Sometimes in the fall and sometimes in the spring of the year.

134 Q. What did you go up there in the summer for?

A. We were cutting timber just below the mouth of Green river, on the Kentucky side, and went up through there for convenience; it cut off a great deal.

135 Q. Were you cutting timber in the middle of the summer?

A. In the fall.

136 Q. I asked what occasion did you have to go through
746 the bayou in the middle of the summer?

A. Generally went up—been up to the limekiln at the mouth of the river, the rock quarry.

137 Q. Where was the limekiln?

A. Right below the mouth of Green river.

138 Q. What did you go up to the limekiln for?

A. We made lime there; had the rock and burned it to make lime.

139 Q. Did you ever go the entire length of the Green River Island bayou at times of extreme low water?

A. Well, I do not know; I could not say as to extreme low water or not.

140 Q. Then how do you know what the condition of the bayou was at times of extreme low water in the Ohio river?

A. We went up the river in the lowest stage of water there.

141 Q. You went up the river when the river was low?

A. We judged it was the lowest water.

142 Q. When it was the lowest water you did not go up the bayou?

A. We did if we — occasion for it.

143 Q. Could you have gone up the bayou when the water was at the lowest stage in the Ohio river?

A. I do not know about that. Frequently men came down the bayou to Evansville with marketing in skiffs.

144 Q. Did you ever see anybody come down the bayou,
747 with your own eyes, when the water was at the lowest stage in the Ohio river?

A. Only if I was in a skiff myself; I would see it then.

145 Q. When the water was at the lowest stage in the Ohio river did you go down the bayou in a skiff?

A. Yes, sir; at that time.

146 Q. Have you gone the whole length of the bayou when the water was at the lowest stage in the Ohio river?

A. No, sir; not the whole length.

147 Q. Could you have gone the whole length when the water was at the lowest stage in the Ohio river?

A. I could not say as to that, from the fact that there were drifts and one thing and another that was in the way.

148 Q. When you first knew Green River Island were there people living on it?

A. Well, there was little shanties right along on the bank there. The farmers generally put wood there—built wood-houses on the river.

149 Q. When did you first know Green River Island?

A. I think it was about 1837.

150 Q. I thought you spoke about 1830 a little while ago.

A. Well, in 1830—well, early in the '30's; I did not say any particular year; I say in the '30's.

151 Q. You meant, when you said '30, '37, did you?

A. '37, of course.

748 152 Q. Where were you born?

A. I was born in the upper part of this State.

153 Q. Where did you first move to?

A. Henderson county.

154 Q. Where did you live, with reference to Green River Island, the first time you moved?

A. The first time I moved I moved out to what is called Pooltown, the first of my recollection.

155 Q. Where is that?

A. It is in Webster county now.

156 Q. Where did you move to from Pooltown?

A. To the Ohio river, opposite Evansville.

157 Q. Did you live towards Henderson from Evansville or up the river from Evansville?

A. Lived right on the bank of the river opposite Evansville.

158 Q. And opposite what part of Evansville?

A. Main street.

159 Q. How old were you when you moved there?

A. I was some eight or nine years old.

160 Q. How long did you live there?

A. I lived there from about 1837 up to—I left there in 1846 and went back there and stayed there two years after that.

161 Q. You were eighteen years old when you left there, then?

A. Eighteen.

749 162 Q. When you left there?

A. No, I went back there—somewhere about there.

163 Q. You were about seven or eight years old when you went there and about eighteen when you left?

A. Not far from it, as near as I can recollect.

164 Q. And did you take particular notice of the condition of Green River Island?

A. Well, I was close to it every day.

165 Q. You went over there every day, did you?

A. No; you asked me if I took particular notice.

166 Q. I thought you said you went every day?

A. No, sir.

167 Q. You saw the mouth of it every day?

A. Yes, sir; I was close to Evansville.

168 Q. Did you see a steamer go through the bayou?

A. Well, I have seen them go up there and seen them come out there, and they said they did.

169 Q. You do not know whether they went through the bayou or only off to one side, over the overflowed country?

A. Well, they said they went through and they gave bills of lading to that effect.

170 Q. Did the bill of lading state that the boat went through the bayou?

A. Well, they were taking aboard pretty much from one end to the other of it

171 Q. How much water was there in the Ohio river when
750 these steamers used to go through there?

A. I do not know—but a good boating stage.

172 Q. What do you call a boating stage?

A. So that the boats can all pass the bars.

173 Q. How many feet above low-water mark?

A. From six to eight feet; called that generally a pretty good boating stage.

174 Q. How do you know that there was six or eight feet in the Ohio river at the time these steamboats went through the bayou?

A. Well, I had a fair chance; crossed the river every day and knew the lowest marks; generally kept our measure from low-water mark up to the high-water mark; generally knew the variations.

175 Q. Did you ever see the Green River Island bayou, at the head of Green River Island, in times of low water?

A. I do not know whether it was at the lowest stage or not; I do not remember about that particularly.

176 Q. Will you swear that at the lowest stage of water in the Ohio river there was a continuous flow of water through the Green River Island bayou?

A. In what year?

177 Q. When you first knew the Green River Island bayou?

A. Yes, sir; there was a little current in it all the way through.

178 Q. Did you not say just now that you never saw the head of the bayou in times of lowest water?

751 A. I said I did not remember whether it was the lowest stage or not.

179 Q. Yet you swear there was a continuous flow of water through the bayou when the water in the Ohio river was at the lowest stage?

A. Well, it was coming out at the mouth, where I saw it every day.

180 Q. You merely judged there was a flow through the bayou because you think there was from the mouth?

A. When I went up through there there was passing way for a skiff.

181 Q. When you went up through there?

A. Yes, sir; but whether it was at the lowest-water mark I do not remember.

182 Q. Did you mean to swear that you never saw this bayou go dry, or will you swear definitely that the Green River Island bayou

never did go dry in summer in times of lowest water in the Ohio river? Which do you mean?

A. I say I never saw it dry.

183 Q. At what point near Green River Island has the Kentucky shore been washing away, if it has washed away any at all near Green River Island?

A. I do not believe it has washed away any.

184 Q. You think the Kentucky shore has not washed away any near Green River Island?

752 A. Oh, the Kentucky shore. You said the island, I understood you.

185 Q. No; the Kentucky shore. Opposite what part of the island has the Kentucky shore washed away?

A. The Kentucky shore has washed away considerably.

186 Q. Opposite what part of the island?

A. Pretty much all the way; the full length of the Kentucky shore.

187 Q. How do you know if you have not been there since 1848?

A. I speak of the time I was there; it washed away a good deal; I do not speak of it any other time, for I do not know.

188 Q. How much did the Kentucky shore wash away during the time you were living opposite Evansville?

A. It cut away a good deal there; I do not remember the amount; considerable, though.

189 Q. How many feet at the place where it cut away most do you suppose it cut away during the time you were there?

190 Q. From Evansville?

191 Q. From anywhere from Evansville up to the head of the island.

A. Right opposite Evansville it cut away, I suppose, two hundred feet or more while I was there.

192 Q. Did it cut away any above Evansville?

A. Yes, sir. On the Kentucky shore?

193 Q. On the Kentucky shore.

753 A. Yes, sir; all the way up. Some places cut in more than others.

194 Q. Did it cut away near the head of the island at all?

A. No, sir; from the fact that it was rock bottom.

195 Q. Did the head of Green River Island during the time when you lived in the vicinity of Green River Island fill up or wash away or neither?

A. The head of the island?

197 Q. Yes, sir. I am not speaking of the tow-head, but I am speaking of the head of Green River Island. Did the head of Green River Island during the time when you lived in its vicinity fill up or wash away?

A. It filled.

198 Q. Now, I ask you, when you speak of the head of Green River Island, do you speak of the land at the head of the island itself or are you speaking of the land at the head of the bayou? Where are the fills, in other words?

A. Right where—we always called them the chute; the river men, the Green river chute and the tow-head chute.

199 Q. The only fill you noticed was at the chute, was it?

A. At the chute; the Green river chute.

200 Q. Did the head of the island itself fill up any?

A. Not that I remember of, in my recollection.

201 Q. The head of the island itself did not move up the river while you were there?

754 A. No, sir; not that I know of.

202 Q. The island itself stood about the same all the time you were there, did it not—the head of the island?

A. I never noticed that particularly in passing through.

203 Q. Which side of Mrs. Aikens' place was the head of Green River Island?

A. Which side?

204 Q. Yes, sir. Was the head of Green River Island above or below the Aikens place?

A. Below where they were living at the time I was there.

205 Q. How far below the Aikens place was Green River Island at the time you were there?

A. I never noticed particularly about that.

206 Q. How far would you judge it was below the Aikens place?

A. A short distance; I cannot say particularly.

207 Q. Would you say a quarter of a mile below?

A. The island is below.

208 Q. Would you say the head of the island was a quarter of a mile below the Aikens place?

A. I do not remember; it was a very short distance, I know; I could not say positively about that; a quarter or a half; a very short distance.

209 Q. Do you remember any particular men among the old
755 settlers that you ever heard say anything about the Green River Island bayou?

A. Yes, sir.

210 Q. Who were they?

A. John Shanklin, Robert Barnes, McKee Caldwell.

211 Q. What did they say about it?

A. They were frequently talking about it, and said the drifts ought to be moved out to keep it from filling; and Dr. Grafton.

212 Q. When was that?

A. That was when I first went on the river.

213 Q. Did they say anything about any connection between Green river and the Green River Island bayou, or what did they say?

A. I did not pay much attention; I was quite young. They were talking about the course of the river—the former course of it—and would frequently make remarks about those matters. Old Dr. Bray, I think probably he is living yet. I knowed the men there at the time.

214 Q. What did Dr. Bray say about it?

A. He only just remarked that that bayou should be kept clean.

215 Q. Was that all he said?

A. I do not know. He might have said a good deal more; I do not remember.

216 Q. Can you tell anything more what he said; do you recollect anything more that he said in relation to the bayou?

756 A. Well, yes.

217 Q. What was it?

A. He remarked that if that bayou was not kept clean a bar would form in front of Evansville.

218 Q. Where did that bar begin that was in front of Evansville?

A. I can show you (referring to the map).

219 Q. Never mind that map; we do not want anything to do with that map.

A. Well, we supposed about six miles above Evansville where we first noticed the bar making—between five and six miles.

220 Q. You mean to say that the bar extends for five or six miles above Evansville down to the city?

A. Yes, sir; I do; that is the way it comes.

221 Q. Do you know that that bayou ever had anything to do with the making of that bar?

A. I am satisfied that it did.

222 Q. Why are you satisfied that it did?

A. When the bayou got choked up so that there was no current passing through it the bar formed all the way down.

223 Q. I thought you said the current did pass through the bayou?

A. It did when I was there.

224 Q. How can you state anything about the state of affairs after the current stopped?

757 A. They were always making remarks that the drift forming in that chute, it would do it. That is what these men said that I just said that I called their names.

225 Q. All this that you say about the bayou having any effect on the bar is mere opinion of yours?

A. Well, I believe that myself, from the appearance.

226 Q. How do you know that the residents of Green River Island paid their taxes in Kentucky?

A. Well, the officers went over there and said they went over there to collect taxes. That is as far as I know about it.

227 Q. When was that?

A. During the time I was up there on the river, living there.

228 Q. You do not know whether they collected any taxes, do you?

A. I did not look at the record to see. I presume the assessor's book will show.

229 Q. What season of the year did you go through the bayou in a coal-boat?

A. Went up there generally in the fall season; sometimes in the spring, just as business required.

230 Q. You never went up in a coal-boat in summer, did you?

A. No, sir; went up in a skiff.

231 Q. Do I understand you to say that there was any tra-

758 dition that Green river used to run through the Green River Island bayou, or did you hear that surmised by people?

A. I do not know that.

232 Q. Have you ever heard people say anything, then, that they supposed that might be so?

A. They said it was likely the river had run through there in time, but I did not know any one old enough to state the fact.

233 Q. What did the old people say about this slough over on the other side of the bottoms that you spoke of in your examination-in-chief, about two miles north of the Green River Island bayou, near the high bank, or did they say anything about it?

A. Well, it was frequently remarked by men, that said it looked as though the river might have passed through in time.

224 Q. It looked as though it might?

A. Yes, sir; from the looks of the bank there.

225 Q. They did not say whether it was a thousand years ago or fifty years ago, did they?

A. Not that I know of; no, sir.

226 Q. Did they have any low-water mark at the time you lived near Green River Island?

A. Well, yes; it looked like they ought to.

227 Q. Did they have any established?

759 A. Yes, sir; of course; the lowest at that time. I can give you an idea of the facts of the case. They ought to come mighty near it. When Evansville was first built there they had no place to land. It was a poor bank. The bank was sand—quicksand—and only in certain places just above Maine street they could make a landing. They made two columns in this position (indicating) going each way and quarterly up the bank, and they made it down to the low-water mark—put those columns of timber in—that was before the bank was graded there—and by that means they knew exactly where the low-water mark was, because those timbers extended down each way.

228 Q. How high a flood did you ever know while you was living there?

A. Forty-seven.

229 Q. Forty-seven feet do you mean?

A. The year 1847.

230 Q. How many feet above that low-water mark was that then?

A. I do not remember now, I have been off the river so long and paid no attention to it.

231 Q. About how many feet was it?

A. I could not state the number of feet. If I was up there I could tell you within an inch. I never measured it, but it was considerably heightened, though.

760 232 Q. Did you say that when the water was six or eight feet above low-water mark you could go through the bayou in a skiff? Could you from one end to the other when you left there?

A. You could at the time I went up through it.

233 Q. From what facts do you judge it would take only six or eight feet of water?

A. I do not understand you.

234 Q. Why do you think it would have taken only six or eight feet of water in the Ohio river to have enabled you to go through the bayou in a skiff?

A. Well, boats could only run when they had certain water, and when they had certain water in the channel they could generally go up through the chute with small boats.

235 Q. They could go up into the chute, but could they go through it?

A. I do not know. I was not along. They went in it, but as for going through it I could not say.

236 Q. You mean the bayou when you say chute?

A. Well, we called that the chute.

237 Q. I thought you said you called it the chute between the tow-head and the island, but I am talking about the bayou.

A. I was going to explain that, and you said you didn't want to know anything about that—about the tow-head.

238 Q. I did not want to know anything about the tow-head.

761 A. Well, I cannot explain why they stated that.

239 Q. Let me ask you this: When you was saying that if there was six or eight feet of water they could go through the bayou, which place did you mean?

A. Well, we always called it the Green river chute.

240 Q. What did you call the Green river chute?

A. This bayou.

241 Q. What bayou?

A. The bayou you are speaking of.

242 Q. I am speaking of the bayou between Green River Island itself and the Indiana shore. Now, I ask you could you go through that bayou between Green River Island and the Indiana shore with a skiff when there were only six or eight feet of water in the Ohio river when you left there?

A. Well, the way we considered it at that time.

243 Q. The way you considered it?

A. We went up through there.

244 Q. Up through where?

A. Through this bayou, as you term it. As I say, they had always known it as the chute—Green river chute; that is what the boatmen called it.

245 Q. Do you understand by the words Green river chute the water channel between Green River Island and the Indiana shore, or what do you understand by the words Green river chute?

762 A. This bayou you speak of; but you term it bayou. It comes in below the Aiken's farm, as you term it, but, as we speak of it, right across from Green river, and it comes down and comes out above Evansville; that is what they call the chute.

246 Q. That is what I am speaking of. Now, I ask you, could you go through what you call the chute in a skiff in summer at the times of lowest water?

A. Well, I am speaking of when it was six feet in the channel they could go through there in a skiff. That is what I understand you, and I give it in that way. That is my recollection about it still.

247 Q. You think, then, at the time of your earliest recollection, that that bayou—the bottom of the bayou—was about four or five feet above the channel of the Ohio river, do you?

A. I do not know about that.

248 Q. Well, if there were six or eight feet in the channel of the Ohio river——

A. (Interrupting.) We could pass through that bayou.

249 Q. Could you pass through with a coal-boat when there was six or eight feet in the Ohio river?

A. I do not know about that; I only went through in a skiff at that stage of water.

250 Q. Why did you not go through with the coal-boats?

A. Had no business there with it.

251 Q. Could you have gone through with a coal-boat when there was six or eight feet in the Ohio river?

763 A. I did not examine particularly.

252 Q. Do you think you could have gone through with a coal-boat with four or five feet of water in the Ohio river?

A. I do not suppose I could.

253 Q. Do you think you could with a coal-boat drawing three feet?

A. I do not know about that; I never was particular to examine about it; there was some shallow places frequently.

254 Q. How shallow were the shallowest places when you went through there in a skiff?

A. I do not know. We did not try the lead all the way through.

255 Q. No; but as you were rowing with the skiff you would generally know whether the water was shallow?

A. You might — the oars if it was shallow enough.

256 Q. When you went through there did you ever strike the oars on the bottom in the middle of the bayou or chute?

A. I do not remember about that.

257 Q. How many times have you been through that bayou in summer?

A. I do not remember the time.

258 Q. How many times do you suppose you have been through there?

A. Once or twice.

764 259 Q. I am speaking now of what you call the chute.

A. I understand you.

260 Q. You think you have been through there twice in summer?

A. Well, or the spring or fall I speak of—just passing through the whole summer season.

261 Q. You think you have been through the chute twice during the summer?

A. That is my recollection of it—that is, understand me, from spring until fall.

262 Q. What were the occasions of your going through there those two times; do you remember any of the circumstances?

A. Well, we worked just below the mouth of Green river.

263 Q. What purpose had you in going through there those two times?

A. From the fact that it was nearer than going around by the river.

264 Q. Do you remember what month it was you went through there?

A. October or the fall.

265 Q. Do you call October in the summer?

A. I told you from spring on until fall.

266 Q. You say you have been through the bayou only twice in your life in the summer time?

A. No, sir.

267 Q. Or through the chute twice in your life in the sum-
765 mer time?

A. I said sometimes we went once or twice in the summer season—from summer to fall; that is my idea.

268 Q. Did you ever go through the chute in the month of July?

A. I have no recollection of it, what month.

269 Q. Will you swear that you ever did go through the chute in the month of July?

A. No, I won't; for I hav'n't any recollection of it.

270 Q. Will you swear that you ever went through the chute in the month of August?

A. I do not remember whether I did or not.

271 Q. Will you swear that you ever went through the chute in the month of September?

A. Yes, sir.

272 Q. What year was that?

A. I do not remember. By referring to books I could tell you.

273 Q. Why do you swear that you went through the chute in September?

A. The burning of the lime kiln commenced in September.

274 Q. What time in September did you commence?

A. I do not remember the date.

275 Q. About what time in the month did you commence?

A. It was after we got through hauling tobacco; I do not remember what time in the month. We sometimes finished along
766 about the first of September. Along about the first; I do not remember what day.

Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

276 Q. By going through the chute once or twice in the summer do you mean that you were in the habit of going through once or twice each summer while you were living there?

A. No, sir; not each summer; frequently.

277 Q. Frequently, but not each summer?

A. Each summer when we had business.

278 Q. You stated to Mr. Snow that you could not swear that you ever saw the head of the chute in the very lowest water in the Ohio river; that is the substance of what you said to him. Can you say that you saw it when, to the best of your knowledge and belief, it was at low water?

A. I could not say as to that. I do not remember whether it was the lowest stage of water or not.

279 Q. But in all the years that you lived near there you never saw it when there was not a stream running in at the head?

A. Well, little drifts and stuff was coming out, and of course it designated there was a current, or must have been, and I would judge from that that there was some little current in it.

280 Q. Please explain a little more fully what the rivermen
767 mean by the Green river chute and the tow-head chute that you have spoken of.

A. Well, they would always say, "If you are going up the Green river chute the men up there would want produce carried up. If you are going through the tow-head the farmers would want to know whether he could get his freight carried that route or not."

281 Q. Was what they called the tow-head chute between the tow-head and the island, or between the tow-head and the Kentucky shore?

A. This is the tow-head (indicating on map marked Exhibit "Z") between the tow-head and the island that we are speaking of.

282 Q. That is what they called the tow-head chute?

A. That is the tow-head chute there.

283 Q. And the Green river chute was on which side of the island?

A. The Green river chute was on the north side.

284 Q. On the north side of the island?

A. It was. Farmers living on the banks here, going up what we called the tow-head, would say, "Now, if you are going this route we can send our freight by you; if you are going up the Green river chute we cannot do it."

285 Q. You mean farmers living on the south side of the island would want their produce carried up the tow-head chute?

768 A. Yes, sir.

286 Q. And on the north side of the island they would want their produce carried up the Green river chute?

A. Yes, sir; that is the way they designate it.

287 Q. Was there any channel between the tow-head and the Kentucky shore?

A. Yes, sir; that was the main channel, but when the water got up here a little, to a good boating stage, they would go up between the tow-head and the island.

288 Q. Can you say which was deepest, the tow-head chute or the Green river chute?

A. I never traveled that chute but a little and I do not know that I could state about it.

289 Q. You mean the tow-head chute you never traveled much?

A. The tow-head chute; I have been up to it a time or two, but that in a time of high water. I noticed, though, when the river was up high the boats always put across and went behind the tow-head on the north side from the fact that it cut off considerable strong current and it was much nearer.

And further the witness saith not.

(Signature waived.)

769 WILLIAM BEACH, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. You may state your name.

A. William Beach.

2 Q. How old are you?

A. I am fifty-four years old the 9th of next August.

3 Q. Where do you live?

A. I live on Jackson McClaine's Walker's-Place farm, Horseshoe Point.

4 Q. In Henderson county?

A. Yes, sir.

5 Q. How far from Green river?

A. I lived right opposite, just about the center of the island.

6 Q. How long have you lived there?

A. I have only lived there now, I guess, about eighteen or nineteen months, where I am living now.

7 Q. Did you ever live on the island?

A. Yes, sir.

8 Q. How long have you lived on and near the island?

A. I lived on the island eighteen years. I believe I was born on the head of the island and raised just above the island.

770 9 Q. Do you know what is called the Green River Island chute or bayou?

A. Yes, sir; I know it by two or three different names. Some called it "old river," some called it "bayou," and some called it "the chute." I have always known it by all three names, and whenever they spoke there I knew what they meant.

10 Q. What is meant by either of those expressions?

A. Well, I believe they meant that they had been traveled by steamboats or something that way.

11 Q. You did not understand exactly what I meant. Where is this chute, bayou, or old river you speak of?

A. The foot of it is, I suppose, about one mile above Evansville—comes out about one mile, or maybe a mile and a half, below the mouth of Green river.

12 Q. Where is it with reference to Green River Island?

A. It runs around Green River Island.

13 Q. Is it between Green River Island and Indiana or Green River Island and Kentucky?

A. Yes, sir; between Green River Island and Indiana.

14 Q. Have any changes occurred in that chute or bayou, in your recollection?

A. Yes, sir; considerable changes.

15 Q. What have they been?

A. Well, the bayou is filled up tolerably, in my recollection.

771 16 Q. How much do you think it has filled up at the head, since your earliest recollection?

A. I would suppose it had filled up twenty feet, maybe more—twenty-five feet, I expect—between twenty and twenty-five feet, anyhow.

17 Q. At your earliest recollection, state whether water ran through that bayou at all seasons of the year.

A. Well, at right dead low water there was no water running through there, but at reasonable stage of water there was always water running through the bayou.

18 Q. At what point in the bayou was it that the water did not run at dead low water?

A. The water could not get in at the mouth.

19 Q. You mean by the mouth at the upper end?

A. Yes, sir. There was always water in the bayou, but it was filled up some at the head, and the mouth of the bayou gradually moving down the river in dead low water the water could not get in there.

20 Q. What rise above dead low-water mark in the river would put water through the bayou, at your first recollection?

A. In 1865, I think, four feet above dead low water would run the water through.

21 Q. Had it been filling up before that time?

A. Yes, sir; it had been filling up considerably.

772 22 Q. Have you ever known steamboats to run through that chute or bayou, from one end to the other, in an ordinary stage of water in the Ohio river?

A. Yes, sir; I have.

23 Q. State what boats they were and when.

A. Well, it was in 1864 or 1865, I am not sure which, that the Mary A. Meant, a side-wheel steamboat, came in there to run the Louisville packet—to run the same trade—and tried to build up a trade, and she always came through the bayou. She tried to head them off because she was not quite so fast as they were. She made several trips through there in the year 1864 or 1865, I am not sure which, but she did not run the year out. They ran as long as they could hold out, I reckon.

24 Q. What was the size of that boat?

A. I could not say what size—a pretty good-sized steamer.

25 Q. I do not care for the number of feet.

A. It was a boat built to run through the Green river trade, but could not get through the locks.

26 Q. Why couldn't it get through the locks?

A. It was too large. She made one trip through there, but they wouldn't let her make any more.

27 Q. What was the stage of water when she ran through on these various trips you speak of?

A. Just an ordinary stage of water; no high water.

773 28 Q. Was there any rise in the river, as you would call it?

A. No, sir; I do not think there was; the water was just up to what was called a reasonably good boating stage.

29 Q. Was there or not any current at the head of the bayou in that stage of water at that time?

A. Yes, sir; the current was very strong at the head of the bayou.

30 Q. Did you know of any other boats going through there in a light stage of water?

A. I rowed through there on the little steamer "Bob Lee," in 1874, I believe, and got off on the bayou ridge, and walked off to the river home.

31 Q. What was the stage of water then?

A. Right up smart, then, but not over any of the land then.

32 Q. Was it over the road on the Indiana bank?

A. No, sir.

33 Q. Was it out in the sloughs?

A. I suppose it was out in some of the low sloughs above Evansville, but we had no water on the farm there where I lived.

34 Q. Has any change taken place in the land at the head of the island, on the island, or on the Indiana shore since you were a boy?

A. Yes, sir; considerable change.

774 35 Q. Tell what that change has been.

A. I lived right above, on the McAllister farm, then that belongs to Mrs. Aikens now. The road used to come right down to the island and turn right out to the McAllister land, to the first ridge, and come right down the ridge—come down the ridge inside of where the wire fence is now. That was the road, and there was a pond of water stood there that could not be crossed, to come the way the road runs now. We traveled that way for years, and finally they changed the read. Corrydon Garrett, I think, cleared up that piece of ground.

36 Q. Has there been much accretion to the Indiana shore, much growing of that shore toward the river in that time?

A. Yes, sir; at the head of the island there has been considerable.

37 Q. Has the mouth or the entrance to the bayou shifted any since your first recollection?

A. Yes, sir; it is down, at the least calculation, three or four hundred yards lower than it was when I was a boy—down the river. It used to come in running pretty near on a line with the mouth of Green river, and gradually kept filling up on the upper side and working the mouth of the bayou down, until finally Dr. Yates went to work and drove piling in there, and put planking in, and

775 caused that to fill up, what was called the old bayou then, and cut in there near the head or right below it—cuts a little lower down every year.

38 Q. What sort of an obstruction was it that Dr. Yates put in there; do you remember?

A. Yes, sir. He drove in good piling there, and planked it up and filled it up to keep the water out. When the water went over it it filled all over it, and I don't suppose a piece could be found there that he put there.

39 Q. What become of that—all covered up, did you say?

A. Yes, sir; all covered up.

40 Q. Do you remember whether he built any fence about the same place?

A. I think he fenced a piece of land there on either side of the bayou, and he and Mr. Garrett had some dispute about it.

41 Q. Did he not, so far as you know, build any fence on that crossing that he made there that you speak of?

A. I do not recollect whether he did or not.

42 Q. How much nearer is the middle of the bayou to the Ohio river than it was at your earliest recollection, at the head of the island?

A. Well, right at the head of the island it is, anyhow, 200 yards.

43 Q. Do you know where the present road through the old Garrett, now the Inklebrandt, place is?

776 A. Yes, sir; I know where the present road is. It runs right down the river to the mouth of the bayou, and makes a turn out there.

44 Q. What was formerly where that road is now?

A. There was a big pond of water run across it in the old bayou—what was called the old bayou. That could not be a road until it was fixed.

45 Q. Along that road as it runs at present, do you remember the bayou ever being there?

A. Where the road runs at present?

46 Q. Yes, sir.

A. Well, some places I think I had pulled the skiff right along where the road is; other places I do not know that there is much change.

47 Q. How wide in an ordinary stage of water was the water in the bayou?

A. I suppose it was about 75 yards wide.

48 Q. Do you think it would average that, from one end to the other?

A. Yes, sir; I think it would.

49 Q. What was the average depth of water in that bayou, from one end to the other, in an ordinary stage of water?

A. I don't know whether I could give the average depth or not; in some places it was very deep and there would be some shallow places, but in an average stage of water I think the shallow places would be from six to eight feet.

777 50 Q. The shallow places would be from six to eight feet deep?

A. Yes, sir.

51 Q. Did you ever own any land on the island?

A. No, sir.

52 Q. Is your father living or dead?

A. He is dead.

53 Q. How long has he been dead?

A. He has been dead—I was twelve or thirteen years old when he died.

54 Q. Had he lived on or about Green River Island before you were born?

A. Yes, sir.

55 Q. Have you ever heard him speak of whether the water ran through that bayou at all times; and, if so, what did he say?

A. I have heard him speak many times about the bayou, calling it the old river. I don't know that I heard him say much about its being dry or anything. I have heard him speak about the bayou and call it the old river many times; when I was a boy, before he died, but I don't know whether I ever heard him speak anything about its being dry, because when I was a little boy we did not know anything about the bayou being dry. I had an uncle living down at the head of the bayou, Abram Franceway, father of this
778 man that lived here and father of Lancaster's wife here; we used to go down there and visit whenever we could, and lots of times we could not cross the bayou or get over. They lived just above the head of the island.

56 Q. Did your father say whether the water ran through that bayou from one year's end to the other?

A. I don't remember that I heard him say about that—whether it did or not.

57 Q. How many years did you say you had lived on the island?

A. Eighteen.

58 Q. After you were of age where did you vote and pay your taxes while you lived on the island?

A. While I lived on the island I always voted here and paid my taxes here.

59 Q. Do you know where the other residents of Green River Island voted and paid their taxes?

A. All voted here and all paid their taxes here. These candidates here used to be very liberal with us; always sent me money to hire a tug or something to bring the voters down from the island. I went to Evansville and got a tug or some kind of a steamboat and gathered all the voters up and came down here in a boat and have a jolly good time and would go back home.

60 Q. Would the sheriff or his deputies come on the island and collect taxes?

779 A. Yes, sir. Mr. Johnson, when he was sheriff, was always over there on hand to collect taxes, and all the other sheriffs that have ever been in.

61 Q. Did you ever know the sheriff or other officer of Hender-

son county to come there with a summons or executions or warrants against property on the island or residents of the island?

A. I never did but one time. I believe the officer came there after Lemuel Stansberry once to attach property. I think he attached the property, but I think Stansberry came down and paid the taxes immediately after. He found the sheriff was bound to have the property or have the money.

62 Q. Did you ever know of any crops on the island being attached or levied on for rent?

A. Well, no. From this side?

63 Q. Yes, sir.

A. I think Mr. Atkinson had one levied on for rent. The man was making way with it, and I think he had one crop levied on there for rent. I am not sure; but it was talked about, and I think it was done.

64 Q. You did not witness it yourself?

A. No, sir; I did not.

65 Q. About how wide, if you know, is the bayou from bank to bank?

A. Well, there is a second bank on each side. It will take from high bank to high bank——

780 66 Q. (Interrupting.) From high bank to high bank I mean.

A. It is about four hundred yards, I would suppose; just guessing at it, I would think at least that, fully.

67 Q. Did you ever observe a growth of large trees on those high banks?

A. Yes, sir; cleared a good deal of land along there.

68 Q. Do those trees, as a rule, grow straight or leaning?

A. No, sir; all lean towards the bayou on both sides. You could not fell them in any other way—only to fall right over there in the bayou. I have cut a number of them, and endeavored to keep them from falling in the bayou.

69 Q. How much land do you suppose has been added to the Indiana shore above the present head of that bayou, in your recollection?

A. Well, I suppose about fifteen acres, just guessing at it.

70 Q. Where was the pond that you spoke of?

A. It was at that time between this road I spoke of where we turned at—that was Mrs. Aiken's land now, as I said, and Mrs. McAllister's then. It was formerly between that road and the mouth of the bayou—just above where the mouth of the bayou is now.

71 Q. How was that old pond formed?

A. That land I speak of?

72 Q. The old pond that was in there, that you spoke of?

781 A. It ran just ranging with the mouth of Green river to the old bayou, and down at the lower end of it it seemed to be a little higher—a little higher at the upper end—so that the water would not come in from the river, and the mouth of the bayou was changed down lower—cut through there.

73 Q. Was that pond supposed to have been part of the former bayou?

A. That was what it was called—the old bayou.

74 Q. Who changed the road cutting across the lower end of that pond?

A. Corrydon Garrett, I think. The bank out next to the river filled up until it was high enough to be a good road, and he wanted to clear that piece of land, and by making a culvert down across—well, where the road now makes a turn—he could cultivate that piece of land, and I think he made the culvert.

75 Q. How did he make the culvert you speak of?

A. Well, logs and dirt.

76 Q. How did he use them to make it?

A. Put them in and covered them up.

77 Q. Put them in and covered them up?

A. With dirt.

78 Q. Was the water running under them?

A. I think he left an outlet—I am not sure—for the water to get out. I know he tried to drain that pond, and I suppose that
782 is the way he would drain it.

79 Q. Do you mean that he made a causeway from the old road down to the river?

A. Yes, sir; from where the road is now; from where it makes the turn he made a causeway to where it made a turn to come on towards Evansville.

80 Q. How did the old road run from about the first turn up near Buck Island?

A. The old road?

81 Q. Yes, sir; that is going up the river?

A. You mean the old road?

82 Q. The old road?

A. It did not make any turn until you came to the McAllister tract of land, and then it made a turn right square out to the river, and it was not but a short piece.

83 Q. Do you know where the section line between sections 14 and 15 of Knight township is?

A. No; I do not.

84 Q. Do you know where there is an Osage orange hedge there?

A. I know where a part of the line runs, but where it starts in from the river I do not recollect.

85 Q. On the west side of Mrs. Aikens' line do you know where there is an Osage orange hedge?

A. Yes, sir.

86 Q. If that is about the line how far back on that line
783 did the old road come—how far back from the river?

A. I think it would be about three—between three and four hundred yards.

87 Q. How far is the old road opposite Buck Island from the present river bank?

A. You mean from the Ohio river or from Buck Island?

88 Q. How far is the road up there at the head of Buck Island from the Ohio river as it now is?

A. The way it is now?

89 Q. Yes, sir.

A. From Buck Island?

90 Q. The road up there at Buck Island?

A. Well, do you mean from Buck Island or from the river?

91 Q. I mean how far is the road from the river as it is now—I mean at a point in the road where it turns?

A. Where it makes the turn?

92 Q. Yes, sir.

A. I would suppose about between four and five hundred yards—five hundred, I reckon.

93 Q. Did you say that you knew a part of the section line between sections 14 and 15?

A. Yes, sir.

94 Q. Do you know where that line runs with reference to the old Osage orange hedge I asked you about?

A. Yes, sir. I don't know how it runs along that hedge.

784 It strikes through a big part of the McAllister place and strikes a big walnut tree up on the corner. There used to be a walnut tree there; I don't know whether it is there now or not; between what was called the Buck Thomas land and Aikens'.

95 Q. Would it be on or near that Osage orange hedge I spoke about?

A. Yes, sir; that osage orange—Mrs. Aikens' line makes a turn out there; she runs straight out on her lower line, I suppose half a mile maybe, and makes a turn right straight up the river—up four hundred yards—and then turns right square off again, and I think that is the section line. I know that runs direct with the walnut tree between the Buck Thomas land and Aikens' land.

96 Q. Do you know Mrs. Aikens' first name?

A. Elizabeth.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

97 Q. Where were you born?

A. I was born on the head of Green River Island, I believe.

98 Q. How long did you live in that place?

A. I could not say how long we lived on the island; lived right above the island there all my life until I came on the island—a mile or half a mile.

99 Q. Where were you born? On the head of Green River Island, did I understand you to say?

785 A. Yes, sir.

100 Q. How long did you live on the head of Green River Island?

A. I could not say how long.

101 Q. How long do you think?

A. I do not believe we lived there; I reckon I could not have been more than two years old.

102 Q. Where did you move to from that place?

A. The McAllister farm.

103 Q. How long did you live on the McAllister farm?

A. Until my father died.

104 Q. When was that?

A. I do not know what year. I was thirteen years old.

105 Q. You lived on the McAllister farm until you were thirteen years old?

A. Yes, sir.

106 Q. Is the McAllister farm the same as the Aiken's farm now?

A. It belongs to Mrs. Aikens now.

107 Q. How far is the McAllister farm from the head of the Green River Island?

A. The lower line is not over a quarter of a mile from where the head of the island is now.

108 Q. Where did you move to when you left the McAllister farm?

A. When we left the McAllister farm me and my brother
786 there (John W. Beach) went to Arkansas.

109 Q. How long did you stay in Arkansas?

A. One year, I believe.

110 Q. Where did you go then?

A. We came back to the McAllister farm.

111 Q. How long did you live on the McAllister farm then?

A. I could not say how long we did live there; I worked there for the Aikens, though, until I was of age.

112 Q. You were there from the time you were fourteen years old until you were twenty-one for Mrs. Aikens?

A. Yes, sir. Then I married and rented land from Mrs. Aikens, and still live there.

113 Q. Where do you rent?

A. Rent part of what was the McAllister land, right opposite the mouth of Green river.

114 Q. How long did you rent that part of the McAllister place?

A. I think I cultivated that place opposite Green river four years.

115 Q. That was until you were twenty-five?

A. Yes, sir.

116 Q. Where did you move to then?

A. To the lower part of the Garret farm.

117 Q. Where is that farm?

787 Q. Opposite Green River Island; back of the island; rather from the river.

118 Q. On the Indiana or the Kentucky side?

A. On the Indiana side.

119 Q. How long did you live there?

A. I made one crop there.

120 Q. You lived there from the time you were 25 years old until the time you were 26, then?

A. Yes, sir.

121 Q. Where did you live then?

A. Went onto Green River Island.

122 Q. How long did you live there?

A. Eighteen years.

123 Q. Where did you move to then?

A. I moved up in Daviess county and made one crop there.

124 Q. Then where did you move to?

A. Back to the Walker farm, where I now live.

125 Q. Is that opposite Green River Island?

A. Right opposite to the mouth of Green river.

126 Q. You have not lived on the Indiana side, then, for about ten years?

A. A good deal more than ten years.

127 Q. How many years?

A. It has been nineteen years since I lived in Indiana; just about nineteen years—that is, I lived awhile in Evansville. I had my family in Evansville and I was cultivating on the island up there.

788 128 Q. You have not lived on Green River Island or in Indiana for about ten years; is that right?

A. How is that?

129 Q. You have not lived in Indiana or on Green River Island for about ten years?

A. Oh, yes, sir; I have lived on Green River Island in less than ten years.

130 Q. How many years ago?

A. It has only been two years that I have been away from Green River Island; about two years and six months. I made one crop in Daviess county, and I think I have lived where I am now living about eighteen months. That is all the time I have been away from Green River Island.

131 Q. What was the condition of the Green River Island bayou—by that I mean the bayou between Green River Island proper and the Indiana shore—in summer and at the time of lowest water at the time of your earliest recollection?

A. You mean what is the difference now?

132 Q. No; I mean what was the condition of the water in the bayou, at the time of your earliest recollection, in summer and in the times of lowest water in the Ohio river?

A. The river had to be very low if we could cross without boats in summer in my earliest recollection.

133 Q. How low had the water to be?

789 A. It had to be dead low stage; I don't know what you would call it; I don't know what stage it would show at dead low-water mark.

134 Q. Do you mean to say that you could not cross it at any point in the bayou, at the time of your earliest recollection, unless the water was at dead low-water mark in the Ohio river; is that your meaning?

A. Yes, sir; not until after Dr. Yates built his crossing there. Then we could cross where there was not dead low water.

135 Q. Is Milton Trible any relation of yours?

A. Yes, sir.

136 Q. What relation is he?

A. Cousin by marriage; he married a cousin of mine—that is, his first wife, not the wife he has now.

137 Q. What was his business?

A. Plasterer.

138 Q. What was his business in his early youth?

A. I don't know what he did follow when he was young. Ever since I have been right well acquainted with him he has been a plasterer.

139 Q. You said on your examination-in-chief that lots of times you could not cross the bayou to get to Franceway's. What do you mean by that?

A. The water was in the way. We could not cross without a boat.

140 Q. What do you mean by lots of times? Do you mean
790 the most of the time you could cross?

A. Well, most of the season we could not cross without boats.

141 Q. There were some seasons of the year when you could cross, then?

A. Yes, sir; when it was dead low water.

142 Q. How long and during what season of the year was it?

A. Well, some summers we did not have it at all and some summers we would have very low water.

143 Q. About how many months at the longest period in any year do you remember that you could cross there, at the time of your earliest recollection?

A. I could not answer a question like that, because a boy like me would not keep account of the months.

144 Q. You would not keep much account of the crossing in that way, would you?

A. I always knowed when I could go. If I could not go I was not very pleased.

145 Q. At the time of your earliest recollection was there any crossing made over the bayou?

A. No, sir; none that I know of.

146 Q. When was the first crossing made?

A. At the head. Dr. Yates made the first crossing that was ever made there.

147 Q. Do you mean that picket bridge was the first crossing?

791 A. Yes, sir; that was the first at the head of the island.

148 Q. Where was the first crossing of the bayou made?

A. Below there.

149 Q. I mean where was it made?

A. At the head of the island.

150 Q. You mean that Dr. Yates' crossing was the first crossing of that bayou?

A. Yes, sir; the first crossing.

151 Q. You swear to that?

A. Why, of course.

152 Q. What do you mean by "crossing?"
A. Well, he drove his piling there, as I told you, and filled in there with dirt.
153 Q. Do you mean a bridge crossing?
A. No; he did not make any bridge.
154 Q. Do you mean there were any other places for crossing?
A. Oh, there were places we did cross, but we could not cross without going through the water.
155 Q. When was the first of those built?
A. I think I built about the first one myself, there on Colonel McClain's place.
156 Q. When was that?
A. It has been about twenty years ago; about 1868, I reckon.
157 Q. When did Dr. Yates build his bridge?
A. He never built his bridge.
792 158 Q. Built his crossing, call it what you may?
A. He built a dam in the mouth of the bayou—no bridge, though.
159 Q. When did he build whatever you call it in the mouth of the bayou?
A. I do not recollect what year he built that.
160 Q. About what year?
A. Well, it was, I reckon, about 1864. He built it when I was on the McAllister place.
161 Q. You say you built the first crossing, and it was in 1868?
A. Yes, sir; I think in 1868.
162 Q. You built the first crossing about four years after Dr. Yates built his?
A. Yes, sir.
163 Q. You made that and it was the first crossing?
A. Yes, sir. That was down about the middle of the island—not the middle of the island, but about the middle of Colonel McClain's land.
164 Q. After you were born on the island did your father keep any horses or mules?
A. Yes, sir.
165 Q. Did the other people on the island keep horses or mules?
A. Yes, sir.
166 Q. How did they get their produce down to Evansville or get their provisions from Evansville?
793 A. I suppose they boated them off and skiffed their provisions up.
167 Q. You suppose so?
A. Yes, sir.
168 Q. Why did you not know if you were living there?
A. I know I had to do it after I moved over there, and I suppose they had to do it, too.
169 Q. Did you own horses or mules?
A. Yes, sir; but I could not cross them.
170 Q. You mean to say you could not cross any time of the year?
A. Oh, sometimes in the year we could cross.

171 Q. You could cross with a horse and wagon when you were living there?

A. Cross, maybe, sometimes in dead summer, and maybe sometimes in the fall.

172 Q. Did your father ever cross in dead summer?

A. Not that I know. When I was born there on the island I was too young to watch anything about his work on the island.

173 Q. When you were living with Mrs. Aikens did you ever know any people to cross on horses or with wagons to the island?

A. Yes, sir; at certain times of the year I knew them to cross.

174 Q. What kind of a crossing did they go across?

794 A. I could not tell you that—not until after I got down there.

175 Q. Did the people cross on foot when you were living at Mrs. Aikens'?

A. They could in some places; yes, sir; some places they could cross on foot in summer.

176 Q. How many places could they cross on foot in summer when you were living there?

A. I believe at Lem. Stansberry's there was a high place there, that was just above Colonel McClain's line.

177 Q. You did not call that a crossing?

A. It was right across to his house there.

178 Q. When you first became familiar with it was there a road across to Mr. Stansberry and to the island?

A. No, sir; not when I first knew the island there was no road across there. Austin Phillips owned it then. When I was a boy there was no road across from his place to the Indiana shore. They worked around some way to the head of the island.

179 Q. When was that road built?

A. I could not tell you.

180 Q. When did they begin to cross at Mr. Stansberry's place?

A. I could not tell you how long it has been since they went across it.

181 Q. Was it forty years ago?

A. No; I do not think they crossed there then.

795 182 Q. Was it thirty-five years ago?

A. It was standing deep water there then.

183 Q. Standing water, was it?

A. Yes, sir; just above the crossing there is standing water there yet.

184 Q. Well, was it standing water there then?

A. Yes, sir; I don't know whether it was standing.

185 Q. Mr. Stansberry built that road, did he?

A. He never built any road; it built up itself. I told you a while ago that I was the first one to make the first crossing.

186 Q. That was put across in 1868?

A. Yes, sir; I put a bridge—log and dirt—on Colonel McClain's place that we could cross pretty well, but the water ran over it.

187 Q. At Stansberry's place they did not need that; they could cross anywhere?

A. They always came to my crossing.

188 Q. You did not build your crossing until 1868, and they crossed there a great many years before that at Stansberry's?

A. They crossed some way; I do not know how they crossed; they had a road there, I know, in low water.

189 Q. When they could cross at Mr. Stansberry's could they not cross at the head of the island, too?

A. After Dr. Yates built that dam in there they could; they could not do it before.

796 190 Q. Could they cross near the head of the island?

A. Before Dr. Yates built the dam at the head of the island there was always water there, coming in or running out, and quicksand that could not be crossed.

191 Q. How much of the time was it running out—how much of the year?

A. Well, it would be running out in dead low water.

192 Q. How much of the year during the summer?

A. That is a hard question for me to answer.

193 Q. Well, generally in summer would it be running out?

A. Part of the summer it might.

194 Q. Was there any crossing anywhere near the head of the bayou at the time of your earliest recollection?

A. None nearer than Stansberry's.

195 Q. How far is Stansberry's from the head of the island?

A. About two miles.

196 Q. How much water would there be in the channel in what you call dead low water?

A. That is, on the bars?

197 Q. No; I mean in the channel.

A. That is a hard question for a man to answer. There are deep places and shallow places.

198 Q. On an average how much water would there be in the river channel at what you call low water?

A. I suppose four feet on the bars. It gets down a good deal lower than that sometimes.

199 Q. There would be a good deal more than that in the
797 channel?

A. Yes, sir. Take the river right straight through, there is a good deal more water than that. In front of where I live now I suppose the water is twenty feet deep.

200 Q. In the channel, then, the water would be twenty feet deep if the water ran into the Green River Island bayou?

A. Oh, in deep places it would be that deep in low water, and four or five feet on the bars.

201 Q. What do you mean by the expression "old bayou?"

A. Well, I told you a while ago it was sometimes called the old bayou, and sometimes old river, and sometimes the chute.

202 Q. What do you mean by — expression old bayou when you are speaking of the water near the head of the island? I think you called something the old bayou up near there.

A. Speaking of this pond up there.

203 Q. Is that what you called the old bayou?

A. Yes, sir; running right to the old bayou.

204 Q. When you say the head of the bayou has shifted do you mean to say that it used to run where the pond was, the head of the chute?

A. I never saw the bayou running there, but it was talked by them people that it was running there.

205 Q. That is the reason you say the head of the bayou has shifted?

798 A. No. It has shifted in my recollection. It has not shifted as far as it would have to to get away from that pond, in my recollection.

206 Q. How far has it shifted?

A. Two hundred yards. When I was a boy the mouth of the bayou came in two hundred yards higher than it does now.

207 Q. What makes you think so?

A. I saw it across the bayou there. There were trees there to show, and are standing there yet.

208 Q. Did you ever measure the distance?

A. Across the bayou?

209 Q. Did you ever measure the distance you think the bayou has shifted, or do you guess it was two hundred yards?

A. I never measured the distance. I just make up the distance from the McAllister line down to where it used to be the mouth of the bayou and the way the water runs in now. I don't suppose it is over 25 yards wide. When I was a boy it was over two hundred yards wide.

210 Q. How wide was Dr. Yates' bridge?

A. I don't know how wide. He built it across the bayou there.

211 Q. How long was it?

A. A good long bridge he built there—the bridge and piling—and he planked it up.

799 212 Q. He put up piles and boxed them up?

A. Yes, sir.

213 Q. I mean between the piles how long was it?

A. He did not aim to build clear across the bayou, but just a low place where the water came in.

214 Q. How long was the bridge between the piling?

A. I never measured it.

215 Q. Guess at it.

A. I don't suppose he drove his piling over seven or eight feet apart and then planked it up.

216 Q. I mean the length of the bridge.

A. I guess about a hundred feet long.

217 Q. Between the piling?

A. No; from one end to the other.

218 Q. I am talking about the length of the bridge between the piling.

A. No one can answer that; it is not reasonable.

219 Q. Did you not see the bridge?

A. Yes, sir. I told you it was about seven feet between the piling

and the bridge was about one hundred feet long, and that is all I can answer about it.

220 Q. You mean the picket fence is about one hundred feet long?

A. I don't mean any fence or anything about it; I just mean the piling and the bridge.

221 Q. Was this anything more than a fence?

800 A. You may call it what you please; I would call it a dam built there and dirt throwed up against it.

222 Q. Describe it.

A. I call it a dam to keep the water out.

223 Q. How was it built?

A. I told you two or three times.

224 Q. Tell us again.

A. It was piling drove in and planked up with two-inch oak plank.

225 Q. All the way along?

A. Yes, sir; and dirt throwed up against it.

226 Q. But there were no pickets?

A. I have answered that as often as I will answer it.

227 Q. How much dirt did they throw up against the piling?

A. I don't know; I could not tell you. He scraped in considerable dirt against that planking.

228 Q. Did he keep on scraping in dirt year after year?

A. No, sir; he did not have to, only one year; it filled in over it.

229 Q. Did he fill in to the top of the banks with a scraper?

A. On one side, very near on top—the side next to the river; on the lower side he did not fill it up.

230 Q. Did you see him making this fill?

A. Yes, sir; I did.

231 Q. What season of the year did the Mary A. Meant go through the bayou?

A. It was in the spring of the year she was running there

801 when she first commenced; she commenced in the spring of the year, and she ran on for some time there and almost every trip came through the bayou.

232 Q. When you went through the bayou in a steamer in 1874 what season of the year was it?

A. It was early in the spring.

233 Q. How long did the steamer Mary A. Meant continue to run?

A. I don't think she run there but about six months in that trade.

234 Q. What month in the spring did she begin?

A. I think she commenced about March.

235 Q. Was that one year, or did she run several years?

A. No, sir; not in that trade more than five or six months. Of course, she could not run against them packets and hold up, and I think Captain Elder and John Adams got her after that and run her in the Owensboro' trade.

236 Q. Do you mean to say that the steamer Mary A. Meant ran through the bayou in summer?

A. Early in the spring she did.

237 Q. You say she ran five or six months in that trade and ran through the bayou only in the early spring?

A. She made several trips through there, but I could not tell you how many.

238 Q. Those trips were made through the bayou in the early spring, were they?

802 A. Yes, sir.

239 Q. When this steamer, Mary A. Meant, was in the Owensboro' trade did she not have to still go up the river from Evansville?

A. Yes, sir.

240 Q. After she ceased to be in the packet business she went in the Owensboro' trade. Then she went up by Green River Island?

A. Sometimes she did and sometimes she went up the bayou. I rode through with Adams after they got the boat.

241 Q. What season was that?

A. I think it was along in the fall.

242 Q. Did you go down through the bayou or down the river?

A. Up the bayou.

243 Q. How late in the fall was it?

A. I am not positive whether in the fall or not, or late in the spring, that I went through.

244 Q. You do not know whether it was in the fall or spring you went through the bayou?

A. No, sir; but I know I went through with them after they got the boat. I was well acquainted with Captain Elder.

245 Q. Has the head of Green River Island itself changed or shifted in your recollection at all?

A. Yes, sir.

246 Q. I am speaking now of the head of the island, not
803 the head of the bayou.

A. The head of the island.

247 Q. How much has that changed?

A. The head of the island has cut off on the island side and made on the other side; moved down the river, as I told you a while ago, considerably.

248 Q. The head of the island has moved down the river?

A. Yes, sir; washed there, and the other side has made. I suppose it has made there, at least.

249 Q. There has never been any making at the head of the island?

A. Not on the head of the island; no, sir.

250 Q. The head of the island has always, in your recollection, been on the Evansville side of Mrs. Aikens' farm, has it not?

A. Oh, yes, sir.

251 Q. And about how far?

A. Well, my recollection—I told you it was only a short distance

from the line of the McAllister farm, what is Mrs. Aikens' now, and where the mouth of the bayou first set in.

252 Q. What do you call "where the mouth of the bayou first set in;" are you speaking of the pond?

A. The old bayou, where the mouth of the bayou set in. Now it is about a quarter of a mile from their line to where the water comes into the mouth of the bayou.

804 253 Q. Where you say the mouth of the bayou first came in—was that bayou connected with the pond then at all?

A. Not in my recollection.

254 Q. The bayou was at that time this side, towards Evansville from the pond?

A. Yes, sir.

255 Q. Since that time has it moved still further towards Evansville?

A. Yes, sir.

256 Q. About how far?

A. Well, it is over two hundred yards further this way than where it was when I first knew it.

Re-examination.

Questions by R. H. CUNNINGHAM, Esq.:

257 Q. When you say the crossing up there by Dr. Yates' was one hundred yards long——

A. (Interrupting.) One hundred feet, I said; I suppose about one hundred feet.

258 Q. I beg your pardon; you said one hundred feet.

A. I never measured it, but just guessing at it I supposed it was one hundred feet.

259 Q. It is mere guessing, then, is it?

A. Yes, sir.

260 Q. You say that Mary A. Meant started in the Louisville trade in the spring, and ran about six months?

A. Yes, sir.

261 Q. Did she continue to run up through that bayou
805 during all the time she was in that trade?

A. I do not know whether she went through there every trip, but she frequently came through there, and almost always come through there.

262 Q. When she was running in the Owensboro' trade afterwards was there the same reason for her running through that shorter channel as there was when she was running against the packets in the Louisville trade?

A. I suppose about the same reason. It was a good deal nearer than going around the river.

263 Q. Was there any other boat running in the Owensboro' trade against her?

A. None that I know of.

264 Q. When she was in the Louisville trade what boats had she running against her?

A. She had the Farasen and the Old Morning Star to contend with then.

265 Q. How much nearer do you suppose it was to go through that chute or bayou than to go around by the tow-head?

A. Three miles, anyhow.

266 Q. Has Green River Island, on the south side from there by the tow-head and from there down, been making or washing away, on your recollection?

A. Well, it has been making all the time after you get a
806 little below the mouth of the old bayou, and it has been making very fast.

267 Q. Now, the main shore on this side of the river, has that been making or washing away?

A. That has been falling in very fast.

268 Q. About how much has that fallen in in the last twenty years?

A. Well, from the upper part of the farm that Colonel McClain gave his daughter, Mrs. Major, in the last two years, down to where I live, about a mile, it has went in over 100 yards.

269 Q. Do you know anything about how much it has cut off on the Atkinson farm?

A. I know it has cut off a great deal, but I could not say how much because I have not been there a great deal; the bank has been falling rapidly all the time and is still falling in.

270 Q. Has it been cutting away on the Kentucky shore there the whole length of the island?

A. Yes, sir; making on the island side and cutting off on this side. Colonel McClain used to have a big row of timber up there—a wide strip of timber—but it has all gone, and away below where the timber was the bank is gone too.

271 Q. Do you remember the old James McClain place, where Colonel McClain was born?

A. Yes, sir; that is the place I am talking about; that is the farm he gave Mrs. Major.

And further the witness saith not.
(Signature waived.)

807 Whereupon, at the hour of four o'clock p. m., the further taking of these depositions was adjourned until to-morrow, Friday, September 14th, 1888, at 9 o'clock a. m.

FRIDAY, *September 14th*, 1888—nine o'clock a. m.

The parties met pursuant to adjournment.

Present: The same as on yesterday. The taking of the depositions was resumed as follows:

JOHN W. BEACH, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. State your name.

A. John W. Beach.

2 Q. What is your age?

A. I was sixty-two years old the 4th day of last March. I was born in 1826, on the 4th day of March.

3 Q. Where do you live?

A. I live two miles below town, on Colonel McClain's dairy farm, below Henderson.

4 Q. Where were you born?

808 A. I think that I have been informed by my parents I was born in Indiana. They moved out into the high water, and the high water went down and they moved right back. I think that is what my parents told me, I was born in Indiana.

5 Q. Where was your father's residence at the time you were born?

A. On Green River Island, on Mr. Barnard's land.

6 Q. How long did you live there, on Green River Island?

A. I lived there up until I was somewhere near ten years old. I don't know exactly. I was a pretty big boy.

7 Q. Have you ever lived there since, on the island?

A. Yes, sir.

8 Q. About how many years have you lived on the island?

A. I have lived on the island since about five years, I think, if I remember right.

9 Q. About how many years of your life have you lived on the island and when was it?

A. Well, I have never lived over—well, I lived one year about ten miles from it, but, except that, I never lived over five or six miles from the island. I was one year in Newburgh. I suppose now, too, I lived a year over six miles—six and a half.

10 Q. Have you lived any part of your life in Kentucky, across the river from the island?

A. Yes, sir; I lived on the Walker farm five years.

809 11 Q. How far from the island is that farm?

A. Right opposite, nearly opposite the center of the island, right on the bank of the Ohio river.

12 Q. Are you acquainted with that island and with the bayou between the island and Indiana?

A. Yes, sir; some.

13 Q. Have any changes occurred in that bayou, in your recollection?

A. Yes, sir; it has filled up some—considerably. The bayou at the head of the island has moved down the river some little distance.

14 Q. Can you remember as far back as the year 1834?

A. Yes, sir; I think I can.

15 Q. State whether you can remember seeing any steamboat

pass through the bayou; and, if so, tell when it was and the name of the boat, if you can.

A. Well, about that time my father went to New Orleans. He had sold his crop to a man by the name of Pritchard, if I remember rightly, and he went to New Orleans to get his money for it. He came up the river and got off the steamboat at the head of the island. He came up through the chute, up through the bayou chute, and got off the steamer Baltic near the head of the island.

16 Q. He came up through the bayou?

A. Through what I call the bayou, the stream running between the island and Indiana.

810 17 Q. I understand you to say that was in the spring of 1834?

A. Yes, sir.

18 Q. What sort of a boat was the Baltic?

A. The Baltic was pretty near a first-class boat of her day; a side-wheel boat, if I remember right.

19 Q. What was the stage of water in the river at that time?

A. The river was up to a very fine boating stage; there was none of our land on the island overflowed at all, though.

20 Q. Was the water over the banks of the bayou?

A. No, sir.

21 Q. Where did you live during the late war—from 1861 to 1865, say?

A. I lived part of the time—most of the time—on the Aikens place, above the head of the island.

23 Q. During that time state whether any boats ran through that bayou.

A. Well, during that time I could not say whether they did or not—the time I lived on Aiken's place; but I moved from the Aikens place then onto the island, on the bayou side of the island, and James McDonald ran a tug up through there and landed at my house; he ran up there several times, and once he landed at my house. It was a good large tug, and was run by James McDonald, of Evansville.

811 24 Q. What trade was his boat in then?

A. He was going up Green river for some lumber, I think. It was just a transient concern; he had no particular trade; just jobbing around.

25 Q. Did his boat run through the bayou, from one end to the other?

A. Yes, sir.

26 Q. Did he do that more than once?

A. I think he did, if I remember right.

27 Q. What was the stage of the water in the river at that time?

A. The river was up to a fine boating stage; not over the bayou banks.

28 Q. That was about what year, you say?

A. That was about 1863 or 1864.

29 Q. Did you ever know timber rafts to come through that chute?

A. Yes, sir; I saw one raft going through there.

30 Q. In what stages of the water could they come?

A. Well, the water was just a good moderate boating stage when the raft went through there. The Ohio river was at what I call a good, moderate stage. What I call a good, moderate stage is a stage sufficient for first-class boats to go through the Ohio river.

31 Q. Did you ever know of any other boats or tugs going through there?

812 A. I knew of one New Orleans boat backing down through the mouth, through Corrydon Garrett's place, and taking on a crop of corn and going on down through—a side-wheel boat; I forget her name.

32 Q. About what year was that?

A. I could not say as to what year it was. She backed down—went down backwards—into the bayou, and went down to Corrydon Garrett's farm and took on the corn, and backed on down through the bayou.

33 Q. What was the stage of water at that time?

A. The stage of water was a fine boating stage, not over the banks in the Ohio river. It was rather higher than a common, ordinary boating stage, but not out of the banks.

34 Q. Up to the time when the Baltic landed at your father's place, in 1834, what was the condition of the water in the chute or bayou?

A. Well, sufficient for a boat to run in at that time.

35 Q. State whether or not up to that time and before that time there had been any water in that bayou in an ordinary stage of water in the river.

A. Well, yes, sir. It did not have to be a full boating—a fine boating stage—for there to be water in there. What I call a fine boating stage is plenty of water on the bars in the Ohio river for first-class boats to run.

36 Q. For first-class boats to run in the Ohio river?

813 A. Yes, sir.

37 Q. Was there or not a continuous stream of water through that bayou?

A. You mean the year round?

38 Q. Yes, sir.

A. No, sir.

39 Q. Well, whenever the river was at an ordinary, medium stage?

A. Yes, sir; there was water at that time, but not the year round.

40 Q. At extreme low water in the river the water ceased to run through, did it?

A. Yes, sir.

41 Q. Where was the highest part of that bayou—the highest ground in it?

A. My recollection of that—I won't be positive as to that—it was about two miles and a half or three miles below the head of the island, in the bayou, was the highest point.

42 Q. That was about the highest point?

A. Yes, sir; I think so. If I remember right there is where the water met when down to extreme low water.

43 Q. Was that about the Garrett place you speak of?

A. Just below the Garrett place, on the island. Now, it is the Garrett place where the boat took corn there on the Indiana side, opposite the bayou—Corrydon Garrett's place. I reckon you
814 know where it is. It is owned by Chris. Inklebrandt.

44 Q. At your first recollection what was the course of the bayou with reference to Green river?

A. It was nearly in a direct course towards Green river from the head.

45 Q. How did the road on the Indiana shore run—say there about the head of Buck Island?

A. From the head of Buck Island it started over there on the ridge pointing towards the mouth of Green river, and coming out on the bank at a line with the McAllister farm, now owned by Mrs. Aikens.

46 Q. Did the road then turn abruptly to the right, as it now does, at the head of Green River Island?

A. Yes, sir; the road was changed while I was living on the McAllister farm.

47 Q. You misunderstand my question. At your first recollection, did that road turn abruptly out to the right as it now does? You said it ran on from the head of Buck Island; did you mean the road ran pretty much the same course as it does before it gets to Buck Island?

A. Pretty much; yes, sir.

48 Q. You remember, then, when the road was changed to its present position, do you?

A. Yes, sir.

49 Q. Who changed that road?

A. Corrydon Garrett.

815 50 Q. How was that road made from the old road towards the river?

A. He causewayed this slough you have been talking about until he got across that, and after he got across that the ground was sufficient to make a road on.

51 Q. Do you remember any pond or slough being there between where the old road run and where the present road runs, above the head of Buck Island?

A. Yes, sir; that is the one he causewayed. He got the road around off of that piece of land he had cleared.

52 Q. About how much land is there between where the old road ran and the river?

A. I would suppose there is land there that is cultivated about ten or twelve acres.

53 Q. I mean from the head of Buck Island up to the McAllister place?

A. I understand you; some ten or twelve acres; there might be a little more or a little less.

54 Q. The entrance to the slough or bayou was about on a course with Green river for some distance above its mouth?

A. It was for a time.

55 Q. Now, you say the head of the bayou has moved down the river?

A. Yes, sir; some little distance.

816 56 Q. At your earliest recollection was the island or not making at the head?

A. No, sir; I don't think the island ever was making any at the head that I recollect of. I think the island cut off and made on the opposite side, on the Indiana side.

57 Q. About how near did you ever know the head of the island to be to the McAllister line—the Aiken farm it is now?

A. To the McAllister line it was then. Well, I could not say positively how near; it was some couple or three hundred yards, maybe four.

58 Q. Was it nearer than at present?

A. Yes, sir—that is, nearer than it was the last time I saw it; I have not saw it for some time.

59 Q. Where was the principal channel of the bayou formerly; was it between Buck Island and the Indiana shore or between Buck Island and the Green River Island?

A. Between Buck Island and the Indiana shore.

60 Q. How deep was the water at that place?

A. Well, when the water was up, just getting up pretty well in the banks, right at the head of that island I suppose it was twenty or twenty-five feet, maybe more.

61 Q. Did you know Moses Aikens?

A. Yes, sir.

817 62 Q. Did you ever help him or others do any work on boats in that chute?

A. Yes, sir.

63 Q. Where was that?

A. Just at the head of Buck Island.

64 Q. Was it in the chute between Buck Island and Indiana?

A. Yes, sir.

65 Q. What did you do there?

A. We turned two large flat-boats there and calked them, turned them back, and pulled them out and towed them out of the bayou.

66 Q. About how long ago was that?

A. I could hardly say exactly how long it was. It has been some time ago.

67 Q. And how old were you when you did it?

A. I reckon I was about twenty-six, twenty-five or six or seven, along there, if I recollect right, somewhere in the neighborhood of that.

68 Q. About how far was that, on an average, from bank to bank—high bank to high bank of that bayou—from one end to the other?

A. I never measured it; I would just have to guess at it; I suppose it would average some three hundred yards clear through,

maybe more and maybe it might be a little less, but I think it would average that clear through from main bank to main bank.

69 Q. Are there now, or were there when you last saw it,
818 any large old trees growing on those high banks?

A. Yes, sir.

70 Q. Were those trees straight or did they lean?

A. They all leaned, more or less, to the bayou.

71 Q. On each side?

A. On each side.

72 Q. About how wide was the water, on an average, in the bayou in an ordinary stage of water in the river?

A. Some places it would be probably about one hundred yards, some places less and some places a little more, in an ordinary stage of water.

73 Q. In an ordinary stage of water what was the average depth of water through that bayou?

A. I could not say as to that; some places very deep and some places very shallow. Some places would not be more than enough water to float a flat-boat, and some places would be very deep where a good common tug could run, but there would not be no big water in some places and some places it would be very deep. Like the Ohio river, it had shoals in it.

74 Q. Where did you vote and pay your taxes, &c., when you lived on the island?

A. At Henderson—the city of Henderson.

75 Q. Were you ever summonsed to serve on jury then?

A. Yes, sir; here in Henderson once or twice.

76 Q. In Henderson?

A. Yes, sir.

819 Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

77 Q. When you speak of a fine boating stage, how much water in the Ohio river do you mean above low-water mark?

A. I mean to say sufficient to run first-class boats. I don't propose to give you the depth in feet or inches, because I never measured it, but I mean water enough for first-class boats is what I mean by that.

78 Q. How much water is now considered above low-water mark to be necessary for first-class boats?

A. You will have to ask the rivermen about that; I cannot tell you about that. We always, when first-class boats were running in the river, called it a fine boating stage. As to depth in feet or inches, I cannot give it.

79 Q. Would any water run through the Green River Island bayou except when the river was at a fine boating stage, in your earliest recollection?

A. Well, it would not run through to be of any great service; it would run through before it would come up quite that high, but it would not be of service to boats.

80 Q. What was the condition of the Green River Island bayou, at the time of your earliest recollection, in summer when the water in the river was at the lowest?

820 A. Well, there was one or two places went nearly dry; did not quite go dry, but got so near dry that we could ride over them. I think, if I remember right, there were two places.

81 Q. Where were those places?

A. One at old man Garrett's farm; the other was at his son's farm, Corrydon Garrett, now owned by the Stansberrys.

82 Q. What was the condition of the water on either side of these places where you used to cross in summer or times of low water?

A. Deep holes of water.

83 Q. Standing water?

A. Standing water. Well, there would be some water where we would cross, but it would not be deep.

84 Q. How long, when you first knew the bayou, would the bayou remain in that condition during the year—in that condition of being able to cross and there being pools of standing water?

A. Sometimes it would be a long time and sometimes shorter; it would depend on the rains there. Sometimes it would be a month, sometimes two months, sometimes more and sometimes less. As to the exact time, I could not give it now.

85 Q. Did the people, at the time of your earliest recollection, cross at this crossing with horses and wagons?

821 A. Occasionally they did. Then crossings were very muddy and you had to wade in water.

86 Q. Do you remember at what season of the year it was that the steamer Baltic went up the bayou?

A. As near as I can recollect, the latter part of the winter.

87 Q. That would be February or March?

A. Somewheres about that time. I could not give the time exactly; I was quite a boy. I remember being anxious to see my father, and of his getting off the boat, and that makes me recollect the case. I could not give the exact time.

88 Q. At what season of the year did the steamer which Mr. McDonald commanded, about which you have testified, go through the bayou?

A. That was along in the spring; along about the first of March or last of February.

89 Q. What season of the year was it you saw the timber rafts come through?

A. It was in the spring; early in the spring.

90 Q. And at what season of the year was it that the steamer, the New Orleans steamer, backed into the bayou and came down?

A. That was late in the fall, if I remember right. I won't be positive about that; it seems to me it was late in the fall.

91 Q. Why did she back in at the mouth?

822 A. I think you will have to ask the master of the boat that; I cannot tell you; I was not master of the boat.

92 Q. Where did that steamer come from, do you know?

A. I suppose she came from Louisville or Cincinnati.

93 Q. That is, came from down the river?

A. Came from up the river and went down the river.

94 Q. She came from up the river and backed in at the mouth of the bayou, did she?

A. Yes, sir.

95 Q. And then afterwards went down the bayou?

A. Afterwards went on down with her cargo.

96 Q. How much, in your opinion, has the head of the bayou moved down towards Evanville since the time of your earliest recollection?

A. I would have to just guess at it. I have not saw it for some time. I have not been at the head of the island. I think it has moved down a couple of hundred yards or more from the time I last saw it; but I have not been there at the head of the island. I have been on the island, but not at the head of the island. It is the main drain I am speaking of.

97 Q. On which side of the McAllister farm, which is at present Mrs. Aikens' farm, I believe, was the head of Green River Island at the time of your earliest recollection—towards Evansville or away from Evansville?

823 A. Towards Evansville.

98 Q. Has the head of the island during the time that you have known it ever moved up stream away from Evansville?

A. No, sir.

99 Q. When you say that the water on the side of Buck Island away from Evansville was twenty feet deep, are you speaking of a low spot in the slough?

A. No, sir.

100 Q. Or the general depth of the slough?

A. The general depth of the slough right there for some distance.

101 Q. How far did it continue to be of that depth?

A. I could not tell you the distance exactly how far; it was some distance, though. We did not hesitate anywhere inside of two or three hundred yards of turning our boat up or down.

102 Q. At what season of the year were you at work on those boats?

A. It was in the fall.

103 Q. Can you fix the month or the year?

A. It was along some time in the latter part of October, I think. There was a raise in the river at the time. We were turning and corking the boats for the purpose of running corn to New Orleans—the present crop that growed that year.

104 Q. Was the bayou full at that time?

824 A. The bayou was tolerably full.

105 Q. Was there any overflow of the surrounding lands?

A. No, sir; none at all. There might have been out in some very low sloughs; they would have had to have been very low, though. I did not notice any of them.

106 Q. At a good, ordinary boating stage of water how much

below the bank at the head of the island would the water in the river be?

A. How much below the highest point?

107 Q. Yes, sir; the highest point of the bank at the head of the island?

A. It would be some distance below the highest point there at the head of the island.

108 Q. How much below?

A. I could not tell you exactly, but it would be some distance. The '32 freshet only covered sixteen inches—so my father told me, and he measured it—only covered the highest point there sixteen inches by the rule on Dr. Yates' place—there on the head of the island. That is what my father told me.

109 Q. That is the head of the island?

A. Right at the head of the island. The '32 freshet was thought to be about the highest freshet we ever had, I reckon, except '47.

110 Q. I understand you to say the freshet of 1832 covered the banks of the island only 16 inches?

825 A. That is what I was told; I did not see that, I know that, because I did not go there myself; but that is what I was told by my father, but I do not give it as made by myself.

111 Q. He told you that he measured it?

A. He told me that he measured it, and I did not dispute his word, and do not yet.

112 Q. When the vessels passed through the mouth of the bayou, how much was the land at the sides of the bayou out of the water?

A. Well, it was out right smart; I do not know how much; there was plenty of land out. The water was not out of the bank; it was upon the bank, but not out of the banks.

113 Q. When a steamer could pass through there how high out of the water, or about how high out of the water, was the bank?

A. I could not say exactly how high it was. The water was not out of the banks. She was pretty well banked full, but not out of the banks—that is, when this last timber backed down through, I have reference.

114 Q. When the steamers went through the head of the bayou how much below the level of the road was the water in the bayou?

A. I suppose some six or eight feet below the level of the road where she landed; probably more.

826 115 Q. The level of the road there was about the same then as it is now?

A. I do not know how it is now. I have not been on that road for some time.

116 Q. You yourself have not noticed any great change there?

A. No, sir; not up to the time I left there, at the time I traveled that road; but I have not traveled that road for several years.

117 Q. At the time of your earliest recollection, did this pond at the head or just beyond the head of the bayou have any connection with the head of the bayou?

A. Yes, sir.

118 Q. What sort of a connection did it have?

A. Ran into the bayou.

119 Q. Did it stay as a pond all during the summer?

A. No, sir; it would dry up during the summer.

120 Q. How high was the land between that pond and the river above the pond?

A. I do not know exactly how high it was; it was right smart higher than the pond. I could not say as to how many feet it might be there. It was sand.

121 Q. Was the connection between the pond and the bayou a distinct one or was there marshy ground between them, or what?

A. No, it was distinct; ran in through the bayou.

827 122 Q. Then it was not exactly a pond?

A. No; it was a sort of a first entrance to the bayou; that is my opinion of it; I just give it as my opinion of it. It washed down and that filled up, and it is now tillable land. We used to travel through there in small boats and skiffs—through this pond, as you call it—before the water covered the bank, before it would anywhere near cover the bank. If we wanted to go to Evansville by water we would go through that and strike the bayou.

And further the witness saith not.

Whereupon the further taking of these depositions was adjourned until 1.30 o'clock p. m. of said day.

1.30 O'CLOCK P. M.

The parties met pursuant to adjournment.

Present: The same as before recess.

The further taking of these depositions was resumed as follows:

ROBERT S. EASTIN, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, testifies as follows:

Examination-in-chief.

Questions by Hon. J. PROCTOR KNOTT:

1 Q. State your name.

828 A. Robert Scroggin Eastin.

2 Q. Where do you reside and what is your occupation?

A. I live in Henderson county, Kentucky; I am at present the master commissioner of our circuit court.

3 Q. Have you occupied heretofore any official position; and, if so, what?

A. I have been before county surveyor of Henderson county.

4 Q. How long have you resided in Henderson county?

A. I have lived in Henderson county since 1846, except three years; those were 1855, '56, and '57, that I lived in Daviess but was backwards and forwards in Henderson frequently during that time.

5 Q. In what part of Henderson county have you resided the greater part of the time?

A. At Spottsville and its vicinity the greater part of the time. I have lived here in the city nearly nine years now.

6 Q. Where is Spottsville?

A. It is on Green river, eight miles above its mouth.

7 Q. Have you been familiar with what is known as Green River Island and its surroundings?

A. I have been familiar with it from personal observation since 1876. I made my first survey there that year. I have known of it and heard a great deal about it at various times for the last thirty years.

8 Q. When did you last see it?

829 A. I last saw Green River Island yesterday; I went up there yesterday.

9 Q. Did you or not on yesterday make any observation of Green River Island bayou with a view of enabling yourself to speak certainly with regard to its present appearance and condition?

A. Yes, sir. I measured the width of it at five different places.

10 Q. I will come to that directly.

A. And also I noted the fact that the channel had been filling up for a long — from both sides of the original channel. When I say I measured the width I mean that I measured the width of the original channel from the top of the original bank on one side to the top of the original bank on the other.

11 Q. Were you or not able to trace the original banks on either side?

A. I think so, with reasonable certainty.

12 Q. If so, what indicated to you the location of the original banks?

A. Mainly the large trees growing on both sides of that chute or bayou; and those trees leaned from both sides in towards the old channel where it had been cleared.

13 Q. Was there any difference in the height of the bank on either side and the intervening space?

830 A. Oh, yes, sir.

14 Q. The original bank on either side in most places was higher than the space between?

A. In some places—now, there is one place in particular up near the head of the island that has filled up nearly level on the Indiana side with the old bank.

15 Q. That is the bank of the island?

A. Yes, sir; filled up nearly level with the Indiana bank.

16 Q. How far, commencing at the end nearest Evansville, were you able to trace distinctly the original bank along the Indiana shore?

A. How far above Evansville?

17 Q. Yes, sir; commencing at Evansville and going up the bayou, how far were you able to trace the original bank, without any difficulty at all, on that side?

A. I can trace it on that side down to—well, I do not know exactly where the city limits of Evansville go.

18 Q. I mean where you commenced your observations on the

slough—how far can you trace the old bank of that slough going up the bayou?

A. Oh, I can trace it, I think, with reasonable certainty to up above the head of the present chute, up opposite Green river, to Aikens. That is the name of the last house on the Indiana side.

831 19 Q. Did you take any observations at the point of the road where it leaves its general direction and turns in towards the river?

A. Yes, sir. There was a gap in the—the old trees have disappeared along there for a considerable distance; but I think there are traces there of the old bank, showing it running clear up behind Aiken's house.

20 Q. Where is Aiken's house with regard to the section line between sections 14 and 15, the hedge fence, or the sycamore corner?

A. The Aikens house is below that hedge fence. There is a map up here at the court-house. I do not know whether the map you have here shows those section lines or not.

21 Q. Take this map marked Exhibit "C" and designate on the map the point you started to make your observations as to the character of those banks. I do not mean where you measured across, but where you commenced to notice the banks, tracing the banks as you went along.

A. Well, at the bank here marked "number 4"—the road crossing the bayou marked "number 4"—that was on the Indiana side.

22 Q. In the first place, I want you to commence at the place where you first commenced making your observations, and then trace the north bank along up as far as you traced the bank,

832 giving its condition, and then give the *indicia* you noticed indicating the bank on the other side. Where did you first begin to notice or trace the height of the bank, and so on?

A. The place at which we began to notice or trace was about a quarter of a mile above the site of Smith's edge-tool factory, on this road.

Mr. CUNNINGHAM: Is that site shown on this map, Exhibit "C," Mr. Saunders?

Mr. SAUNDERS: No, sir; that site is further than the map reaches.

A. (Resuming.) Well, it was a quarter of a mile — the site of that factory.

23 Q. There is nothing in the map to indicate where that is; but take that map and indicate about where you commenced your general observation, and what you saw on the north bank from there up, from place to place.

A. As near as I can from this map locate the place where I commenced — was at about where this line (indicating) came into that county road and comes on to the bayou.

24 Q. That cross-section number one?

A. Yes, sir.

25 Q. Now, commencing at cross-section number one, did you or

not trace the Indiana bank of the bayou until you came to the bend in the road near the head of the island?

833 A. Yes, sir; I traced it mainly by the trees and stumps of trees that had stood on the bank of that bayou.

26 Q. Was there anything else that indicated the bank except the trees and stumps?

A. Well, the sloping bank.

27 Q. Now, when you traced that north bank from here (indicating) to the bend near the head of the island, state what indications you saw from that bend out in the direction of the river showing the location of the original bank.

A. There are some trees along near where the road makes the bend that lean in towards the present channel of the bayou, and there is a ridge extending from that bend across in the direction of the Aikens house, and right near the Aikens house is a tall stump of another tree, another large tree that leans out in the direction of the river.

28 Q. Look at the extreme end of that road, as delineated there, and see if you find a mark, "sycamore."

A. Yes, sir, and I remember the tree.

29 Q. Where is the Aikens house, with reference to that sycamore?

A. The Aikens house is just below it.

30 Q. I do not know what above or below it is; is it north or south?

A. It is west.

834 31 Q. Is it north or south of the road?

A. It is north of the road and west of the section line.

32 Q. What is the character of the ground, as it at present appears, between the ridge you have spoken of and the road as it now runs, from the next bend in the road out to the Aikens house?

A. There is some depression there, showing that there has been a pond. At any rate, that is what I think about it, that there has been a pond there.

33 Q. Going back to your original starting point, how far up the bayou were you able to trace the original bank by clear and unmistakable marks?

A. To the bend in the road here across to Mr. Aiken's house, by what I regard as unmistakable marks—the bend in the road just northeast of Buck Island.

34 Q. From your former knowledge and your actual observation of the original bayou, what is the average width from out bank to out bank, from — end to the other of the bayou?

A. The widest point at which we measured it (referring to memoranda) was six hundred and two feet; that I measured yesterday; and the shallowest point was five hundred and forty; and there is a measurement that I made in 1876, from the original bank on the island side to the top of the bank on the Indiana side; that was six hundred and thirty-seven feet.

35 Q. What would you say would be the average width of that original bayou?

835 A. About one hundred and ninety-five to two hundred yards, the average width.

36 Q. Are you acquainted with the width of Green river?

A. Yes, sir; I have crossed it.

37 Q. How does the average width of this bayou compare with the average width of the Green river from Spottsville down to the mouth?

A. It will average wider than Green river will from Spottsville down to the mouth. The original bayou is what I mean.

38 Q. Yes, sir; that is what I am talking about.

A. I will just say positive about that, the dam at Spottsville is 600 feet long, but there is a slight angle in it, and both above and below that point Green river is narrower than at the dam and the neighborhood of the dam.

39 Q. Did you discover in your observations yesterday any difference in the bayou from what it was when you knew it in former years or when you had last seen it before?

A. Yes, sir.

40 Q. It is filling up. It has filled up a good deal from what it was in 1876, when I first began to notice it closely.

41 Q. To what extent has it filled in that time, since 1876?

836 A. Well, there where Cook's line on the Indiana side comes into the bayou, down to where Meyer's line comes into the bayou there has been a filling there in the channel of at least six feet since 1876, and on the second bottoms there, below the original banks, there has been a fill, I should say, of two to two and a half feet. In 1876, between these points I speak of there was a pool of water there that was too deep to try to wade. I was trying to survey a line across it, and we sounded it and found it was more than four feet deep in several places—that pool of water—and I had to get the distance across by cutting the weeds out of the way and making a triangulation.

42 Q. Did you ever have occasion to run the line along this road from the head of the island out to that sycamore near the Aikens house?

A. I ran from that sycamore near the Aikens house to the section corner near the brick school-house in 1885.

43 Q. Where was that line run, then?

A. The deputy sheriff of Henderson county had an attachment on a span of mules just above Buck Island there.

44 Q. On which side of the road as delineated there (indicating on the map)?

A. The mules were between the road as delineated and the
837 river, and the owner of those mules claimed that they were without the jurisdiction of Kentucky, and by an order of our circuit court I went up and run that line.

45 Q. Have you had occasion to observe how fills are made by high water and deposits?

A. Yes, sir; I have observed it in several places—in our river front and on Green River Island.

46 Q. Can you describe something about that process so as to make it intelligible?

A. Usually a ridge formed for some distance from the main bank, leaving a depression between this new-made bridge and the bank, and that depression sometimes gradually fills up and sometimes it does not; and then again outside of that ridge another ridge will form with a depression between the two ridges. I have noticed that character of formation down here in the Diamond Island point, and especially there. A great deal of that point is made land. It can be noticed now on the river front of Green River Island plainly.

47 Q. Did you notice any indication of such formations in this slough—or bayou, rather?

A. Yes, sir.

48 Q. What effect would the cultivation of the original banks—ploughing them from year to year and cultivating corn and other vegetables—have upon the bottom of the bayou?

838 A. Well, ploughing across, ploughing the banks on each side, would loosen it, and the high water and rains both would carry the loose soil down in the bottom at the foot of the slope.

49 Q. What else, if anything, has hastened that than the filling up in the manner you have stated?

A. I think the filling in of that bayou, too, has been hastened by the making of causeways across it where these roads are marked.

50 Q. Did you notice any causeways that have been made there artificially?

A. Yes, sir; I noticed that yesterday and I have noticed it before now.

51 Q. How many had you observed before yesterday?

A. Four; as many as four I can call to mind now.

52 Q. That were made artificially?

A. Yes, sir; brush growing in the bottom of the bayou, and then dirt thrown on the brush.

53 Q. What would be the effect of accumulations of drift along on the banks of this bayou?

A. It would check the flow of the current and the sediment would deposit faster.

54 Q. What effect does eddy water have—backwater, for instance—coming up through the lower end of this slough, with regard to the deposit of sediment?

A. It will deposit more rapidly than a swift-running cur-

839 rent, except where the swift-running current contains a good deal of sand; and sand is the heaviest part of these river deposits, and it sinks first, but the current will carry that further than it would a lighter deposit, and the deposit will form faster where there is an eddy than where there is a current.

55 Q. Have you ever observed the effect — the rise and fall of the Ohio and its tributaries by the clearing up and cultivation of the country?

A. I have noticed its effect and have remarked it.

56 Q. What is the effect?

A. That the clearing up of the forests—the leaves that formerly laid on the ground, through which the moisture trickled, are not there now, and the water runs off more rapidly and streams rise quicker and will fall quicker; and the same effect is produced by the ditching of lands that were formerly marshy—that were waste. There is millions and millions of gallons of water that rush right off into the rivers now that never did get there before. For instance, take a pond or basin that the rains had filled up to its natural outlet before it began to drain off to the streams. When it drained down so that it no longer flowed through the outlet the water that it just took to fill the basin passed away by evaporation; but as those are filled up and drained all that water rushes right off into the——

840 57 Q. The difference has been, you say, to make the stream now rise more rapidly and fall more rapidly?

A. Yes, sir.

58 Q. When the country was entirely covered with forests, waht would be the condition of a stream the year around as compared with its present condition?

A. There would be a better and greater average depth of water; the reservoirs would be held full longer, and, of course, the supply would last longer.

59 Q. Do you know whether or not this bayou has ever been navigated by steamboats or other crafts?

A. I have been through it on one steamboat myself, and I saw another propeller enter the lower end of the bayou, and saw that same propeller come out at the head of the chute. We both left Evansville about the same time; I was going up Green river, and the boat I was on—before we got into the mouth this propeller came out at the head of the chute. The name of that propeller was Nimrod. The boat on which I went through was a small packet called Spottsville—the daily packet from Evansville to Spottsville.

60 Q. What was the stage of water in the river at that time?

A. The banks were not covered. It was nothing like a flood, but considerably above low-water mark. It was a little above the medium stage.

841 61 Q. Do you know of any other boats having passed through there?

A. Not of my own observation. I heard a gentleman that used to keep a wharf-boat at the mouth of Green river, who is now dead, speak of other boats going through there.

62 Q. Who was that?

A. His name was William B. Hopkins. He kept a wharf-boat at the mouth of Green river. It was before 1846, and after that a few years. I first saw him at his wharf-boat there, and he told me that that chute was formerly a regular steamboat channel; those were about his exact words. A while after he left his farm—that is, after he left his wharf-boat—he moved into the country, near Spottsville, and worked a farm, and he told me the last large boat that he knew to go through there was one he saw at Evansville, which was the boat that carried the remains of Dr. Kain up the river, the Arctic

explorer. He had died at Havana, and they carried his body on the boat to Evansville, and he was there and she went through that chute. I have also heard another old citizen say that was the regular steamboat channel. That was Squire E. W. McAllister, now dead.

63 Q. You speak of having made a survey with the view of
842 ascertaining the exact spot where that span of mules was levied on by the deputy sheriff; what was the title of that suit?

A. Well, the object of that suit was to determine whether the point where that levy was made was within the Indiana or Kentucky side of that State line.

64 Q. I want to know the title of the suit—who was plaintiff, who was defendant—and in what court was it pending?

A. It was G. W. Yates against Ralph Handley, in the Henderson circuit court. I may, perhaps, — got those parties mixed, got the defendant and the plaintiff in the wrong place; it may have been Handley against Yates; but those were the parties—Ralph Handley and G. W. Yates.

Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

65 Q. What is your profession or occupation at present?

A. I am now a master commissioner of our circuit court.

66 Q. What was your profession or occupation previous to becoming master commissioner?

A. I had been county surveyor from 1876 up to the beginning about of 1887, except one year; in 1883 I was not county surveyor.

67 Q. What was your profession or occupation prior to 1876?

A. Well, up to that time I had taught school for about sixteen years.

843 68 Q. What was your occupation or profession prior to that?

A. I had been farming immediately before that for several years.

69 Q. And before that?

A. Well, that would take me about to the time I was a schoolboy.

70 Q. What was the nature of your work as county surveyor? Did you have any duties outside of the ordinary duties of county surveyor while you were in office?

A. My work principally was to survey lands and ascertain their area and making surveys to ascertain boundaries where there were disputes, and I did a considerable amount of leveling for the cutting of ditches and work of that kind and tiling. I have done a good deal of leveling for ditching and tiling.

71 Q. Have you ever had occasion in your life to make any topographical surveys of large sections of country?

A. Not of large sections; no, sir.

72 Q. Have you ever had occasion in your work, as surveyor or otherwise, to study the formations of land?

A. Well, not in the transaction of my business, but that has been a question I have taken some interest in.

73 Q. Explain to what extent you have taken interest in
844 such questions.

74 Q. In noticing the formation of accretions to our river bank, how that was done and under what circumstances it was liable to take place.

75 Q. Have you devoted special time or study to that beyond near observation?

A. Well, no study more than my observation of the circumstances under which it usually took place.

76 Q. Have you had greater opportunities for observation in the matter of accretions than other residents of this region?

A. Probably not those that live on or near the river. My business as surveyor takes me about the river regions perhaps more than other residents that do not live in the river bottoms.

77 Q. Have you ever made a special study of geology or botany?

A. No, sir; never made it a special study. I have studied both of those some while a school-boy.

78 Q. But all your knowledge of geology or botany is derived from the study you did while a school-boy?

A. Yes, sir; I never have had any occasion to use it any since I have been a man.

79 Q. What do you mean by the expression "the original bank of the bayou?"

A. I mean by that expression the bank that was there
845 when it was a wide channel, flowing full of water from bank to bank, and as indicated now by the timber and the remains of the timber growing along it.

80 Q. Why do you call it the original bank?

A. Because inside or below that original bank a second bottom has formed—below the original river bottom—and this bayou flows through that second bottom, and they are the banks to that river now.

81 Q. Do you know that that outside bank is the old inner bank of the bayou?

A. Just judging from the nature of the objects on it, I say it is.

82 Q. Would you swear that that outside bank, or what appears to be an outside bank of the bayou, is not the high-water banks of the bayou, and that the inner bank is not the low-water bank of the bayou? I mean by that would you swear that the outside bank is not the bank that might exist in the time of a flood there yet, and the inside bank a bank that might exist in times of lower or lowest water in there yet?

A. The inside bank now did not always exist there at any stage of water, I think; but what I call the original banks were the banks in time of floods, just as the hills at the side of the river where the river bottoms and the hills join might be called the river banks in time of flood.

83 Q. Do you consider the original banks to be the high
846 water or flood banks merely?

A. I do not consider that they were such banks that the water did not get over them in times of flood. I think there is no doubt that the water covered them.

84 Q. Then you do not think that the outside banks—what you call the original banks—are any older formation than the inner banks of the bayou?

A. Oh, yes, sir; I do.

85 Q. From what do you judge that?

A. On what I called the original bank there is a row of trees and stumps of trees, large trees, that all lean towards this bayou, just as trees will lean away from the thick of the forest towards a clear space.

86 Q. Did you examine the trees growing near the cross-section of the bayou, numbered 11 on the map marked Exhibit "C?"

A. Yes, sir; I observed those trees above that bend and below it.

87 Q. How far apart across the bayou are the trees there, at the places where they are nearest together?

A. On the original banks they are between 540 and 600 feet.

88 Q. How far apart are the trees at that point on the inner banks?

847 A. Well, the trees there are mostly young cotton-woods and willows.

89 Q. How much in diameter are those trees?

A. Just mere saplings.

90 Q. How large are the largest of those trees at that point?

A. On that inner bank?

91 Q. Yes, sir.

A. Well, there on the second bottom I do not think there is any exceeding two or two and a half feet in diameter.

92 Q. Did you measure those trees?

A. I did not measure any down there on the second bottom, nor did I actually measure any anywhere on the original bank there.

93 Q. How far apart are the trees near cross-section number 12 of the bayou on map "C," the trees standing on the inner bank of the bayou? How far across the bayou between those trees, or did you make any observation there?

A. We measured the width of the present channel in a few places.

94 Q. I am speaking only of the cross-section number 12. Did you make any measurement there?

A. We did not make any measurement right at that point. We made a measurement at this road, clear across, and at that road the small cotton-woods and willows grew very thickly along the

848 bank of that bayou, and even down in it.

95 Q. I understand you to say that you made no measurement at cross-section number 12, on map "C."

A. No, sir.

96 Q. Did you notice the trees marked as black disk near cross-section number 12, on map "C?"

A. No, sir; I paid no special attention to those on the south side of the bayou there.

97 Q. I understand you to say that in most places you thought

you could make out the original banks, as you call them, along the bayou. Along how great a portion of the bayou did you discover the original banks, as you call them, just speaking generally of the whole length of the bayou? Put it in fractions, if you wish.

A. Well, from a point not far above the city of Evansville to the head of the island.

98 Q. You say, then, you discovered what you call the original banks through the whole length of the bayou, as delineated on map "C?"

A. Yes, sir.

99 Q. Did I understand you to say that at the head it was so filled up that you could not make out the original banks?

A. I did not say that. At the head, between the road and the original banks and between the bend in the road and Aiken's
849 house, there is a place there that is not quit filled up to the level of the original bank, but it shows there has been a depression there that has filled up; but we traced the bank from the bend in the road northeast of Buck Island across to the Aiken house.

100 Q. Will you swear that what you traced crossed there was the original bank of the bayou?

A. I will swear that I believe it was, from the natural objects that we saw there.

101 Q. What are the natural objects that you saw there from which you judge that?

A. These trees growing and leaning towards this old open channel and these sloping banks.

102 Q. How many trees are there at that bend near the head of the island which sloped, in your judgment?

A. There are some just below this bend in the road, northeast of Buck Island, and then across that space, after the road makes that turn, there are young trees until you get to Aiken's house.

103 Q. Then from the turn in the road, near Buck Island, until you get to the Aiken house there are young trees?

A. Young trees now until you get near the Aiken house again.

104 Q. Did you examine the country to the north of Green River Island at all?

A. No, sir.

850 105 Q. Do you know whether there are other sloughs flowing through the land off north of Green River Island and what their formation is?

A. There are some sloughs that come down into this bayou.

106 Q. Did you examine those sloughs at all?

A. No, sir.

107 Q. Did you notice any trees between the bayou channel and the road between cross-sections number 10 and number 11 on map "C?"

A. I do not remember particularly noticing any between those points. You mean the trees down in the bayou? I do not remember noticing any down in the bayou between these points.

108 Q. Between the road and the bayou channel, I said.

A. You said also between cross-sections 10 and 11?

109 Q. Yes, sir.

A. Yes, sir; I noticed none in the bayou between those points.

110 Q. At what season of the year were you surveying between Cronnenberger's, and what line was it—Barnett's line on the bayou?

A. Well, it is the lower tract of Cronnenberger's to Barnett I am speaking of.

111 Q. I merely asked at what season of the year did you make that survey.

A. I made my first survey of that line in the month of
851 June, according to my best recollection, in the year 1878.

112 Q. Did you make any other survey?

A. I surveyed the same line since then.

113 Q. In what part of June was it?

A. I cannot fix the day, and I am not positive as to the month, too.

114 Q. What was the condition of the water in the river at that time, do you remember?

A. The water was at an ordinary stage—about a medium stage.

115 Q. Had there not been a flood previously?

A. Not since the winter before.

116 Q. What do you mean by medium stage of water?

A. Such a stage of water as our larger class of boats can run without danger of getting aground.

117 Q. Were the sloughs full in that neighborhood at that time?

A. Well, there was a good deal of water in that part of the channel in that part of the bayou at that time.

118 Q. Was there any water anywhere else around in the bottoms?

A. Only in the lower places.

119 Q. You judge merely from that one fact that at the time you made that survey there was water between those points in the bayou channel and the fact that there was none when you saw it
852 yesterday that the bayou channel was filled up?

A. No, sir; not from that alone.

120 Q. What else do you judge from?

A. Just from my recollection of the depth of water there and the height of water as compared with the banks, and by that I would determine the fill that has taken place in the bayou in the present channel, and then the depth of the original bank as compared with the second bottom, and I would judge from that the amount of fill that has taken place on the second bottom.

121 Q. You have known about the Green River Island bayou only since 1876?

A. I passed through it on steamboats before that, and I also saw another steamboat go through before that. I have been surveying on it since that time and known it intimately since that time. I have heard a good deal about it for the last thirty years.

122 Q. Have you ever heard anything about a ditch being cut at the lower end of the bayou to let the water out?

A. Yes, sir.

123 Q. Might not that account for the bayou being dry now between these lines where you surveyed?

A. No, sir; because the obstruction would prevent the water from getting down to that ditch.

853 124 Q. What are those obstructions?

A. They are artificial bridges or causeways put in the bayou where these roads cross with brush and dirt.

125 Q. Would the average causeway prevent water from trickling through?

A. If there was dirt thrown on it to make the dam water-tight, and you make the roadway eight or ten feet wide, with brush and dirt thrown on it, it would make a dam that would prevent the water flowing through it.

126 Q. Is there any water in the bayou up to those causeways now?

A. There is water just below the road at cross-section number 6.

127 Q. Is that standing water?

A. The water was standing there yesterday. Well, it has been recently put there by the last flood.

128 Q. How do you know it was recently put there by the last flood?

A. Because the corresponding season for years back it was dry.

129 Q. It is from your judgment you state that?

A. And there is another reason: the weeds and brush at that point show there has been a depth of water—a recent depth there of water—of two feet and a half to three feet along where this water is now standing.

130 Q. Have they recently had many rains in this neigh-
854 borhood?

A. Within the month past we have had very heavy rains.

131 Q. Did you notice water standing on the upper side of any of these causeways you speak of?

A. No; there was no water that I noticed on the upper side of any of them.

132 Q. Would or would not that tend to show that the water would trickle through and does trickle through?

A. Well, I think not; I think it just happens so that above them there has been a greater deposit than immediately below, and that the water has fallen away and left that dry sooner than it did the land below them.

133 Q. That is a matter of opinion, is it not—not of observation?

A. Yes, sir; a matter of opinion, according to facts that there has been a greater fill above these bridges than below. The last rise there has made a considerable fill.

134 Q. Are there ponds between all those causeways now?

A. I cannot say that there are in all of them.

135 Q. At what season of the year was it that you saw steamers going through the bayou?

A. It was in the winter season when I went through there on the steamer Spottsville, and it was in May or June that I saw this

propeller go through—the Nimrod—in the month of May or June.

855 136 Q. What was the condition of the river at the time these steamers went through?

A. The river was, at the time that propeller went through there, about the year 1868—I fixed that date from some circumstances connected with the la-t illness of my father—it was about what we call "half bank full." I had some freight put out from the boat on Green river and I remember we had to carry that up the bank.

137 Q. Could you say how high that would be above low-water mark?

A. Above the present gauge at Evansville—that was between 25 and 30 feet of the present gauge at Evansville.

138 Q. Did Mr. Hopkins or Mr. McAllister say that the bayou was ever the regular steamer channel at all seasons of the year?

A. They did not make use of that expression, "at all seasons of the year," that I heard, but they did say that it was the regular steamboat channel. I remember that expression distinctly.

139 Q. You swear to the word regular?

A. The regular steamboat channel.

140 Q. Do you know what year or years they were speaking of?

A. Well, referring to the time that they had known that bayou in early days. They were old citizens, that were raised in

856 this county and near about the mouth of Green river, and from our conversation they were speaking of the year round or season round, at the time they were speaking of.

141 Q. How did they happen to be speaking of this?

A. Well, Mr. Hopkins was an old surveyor; he had practiced surveying in his early life and was an intimate friend of my father, and whenever we met he and I generally—after I commenced surveying—got to talking on the subject of surveying lands, and it was after 1876 that I had this conversation with him in which he made that expression about that being the regular steamboat channel. I was telling him about my survey there and how it surprised me to see the marks of that channel having filled up so much, and then he went on and told me what he knew about it in his earlier life, and made use of this expression: "It was the regular steamboat channel." He made use of that expression several times in that conversation. Squire McAllister—I have heard him speak of it since 1875 several times. In 1875 the dispute between the States about that line attracted a great deal of attention here. I have heard him speak of it here in the city. He lived here several years before his death, and I had several conversations with him before his death about it.

142 Q. Where did Mr. Hopkins live?

857 A. As I said, he lived—when I first knew him he kept the wharf-boat at the mouth of Green river and then he moved to a farm about two miles and a half from Spottsville.

143 Q. He was a Kentuckian, was he?

A. Yes, sir.

144 Q. And Mr. McAllister was a Kentuckian, was he?

A. Yes, sir.

145 Q. And this conversation was in 1876—at the time they were running the line?

A. Well, the conversation with Squire McAllister was in that connection.

146 Q. At the time the commissioners were running the line?

A. It was after that.

147 Q. How long after that?

A. It was done in 1875 and up to the time of Squire McAllister's death. I cannot say how many conversations I had with him, but frequently. But let me say that the conversation I had with Mr. Hopkins had no connection with the running of the State line at all.

148 Q. In what year did you have the conversation with Mr. Hopkins?

A. It was either in 1877 or 1878 that I had this conversation with him in which he mentioned that bayou having been the regular steamboat channel.

149 Q. That was after the running of the line?

858 A. That was after the line had been run. But in that conversation he and I had nothing to say about the line, the State line.

150 Q. Had you previously had conversations in regard to the State line with Mr. Hopkins?

A. No, sir; I do not remember that Mr. Hopkins and I ever did talk about that State line.

151 Q. Was Mr. Hopkins interested in the matter of a State line, that you know of?

A. No, sir; he owned no land.

152 Q. I mean to say was he interested generally in the question; did he take an interest in it?

A. Except that he had noticed how that place had filled up during his life, and he mentioned that as a matter of interest to him. The way the conversation came up I had been surveying there and went to see him. I do not think that he survived. He was ill for two or three years before his death, and I do not think he got out and around any after I had this conversation with him.

153 Q. Did you go merely to make a friendly call on him?

A. Yes, sir; merely to make a friendly call. He was a member of the same church that I belong to.

154 Q. Did you say that you made a survey near the bayou in 1876?

A. In 1876 I laid a warrant on the lower end of Green
859 River Island and across the bayou to the State line for Julius Coleman.

155 Q. What do you call the State line?

A. What I call the State line, the one I refer to, is the line located in 1875 by Walden & Pfafflin.

156 Q. Did I understand you to say that you made a survey near the head of the island in 1875?

A. In 1875. That was merely to run the line merely to determine

whether the point where some mules had been levied on was within the jurisdiction of Kentucky.

157 Q. From what did you get your measurements in running that line?

A. From the commissioner's report of Walden & Pfafflin, which is on record on our county clerk's office.

Re-examination.

Questions by Hon. J. PROCTOR KNOTT:

158 Q. In your cross-examination you have frequently referred to a house as Mrs. Aikens' house. Is that the house located near the section line between sections 14 and 15, a little west of the line and a little north of the road where it now runs?

A. Yes, sir; that is the house I refer to as Mrs. Aikens. That is the house that I understood was the Aikens house. I am not acquainted with any one on the Indiana side of the river there. That house would be on this tract of land called "Conrad."

159 Q. I understand you to say that you observed on some
860 weeds at certain points indications that water had recently stood there two feet and a half to three feet higher than when you saw it yesterday?

A. Yes, sir. The top of the weeds and undergrowth are still green, and the water-marks are plain on them.

160 Q. What would have been the depth of water at that point in 1875 with a rise of sixteen feet in the Ohio river?

A. Well, that was a year earlier than I had made any close examination.

161 Q. Say the earliest of your knowledge of it—1876, say—suppose the water in the Ohio river had risen sixteen feet?

A. At Evansville?

162 Q. Yes, sir; how deep would the water have been at that point where you saw these weeds?

A. Well, to the best of my judgment, sixteen feet over low-water mark would hardly have got in at that point.

163 Q. Well, put it at twenty-six feet; how deep would the water have been in there then?

A. Well, from the depth of it yesterday, the depth it showed that it had been yesterday, and the fill that has taken place there since 1876, I judge it would have been fully ten feet deep in this last rise we had. That last rise would have made it fully ten feet deep in that place.

861 Recross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

164 Q. Is that a mere matter of opinion?

A. That is a matter of opinion, based on my judgment of the amount of fill that has taken place there since 1876.

165 Q. In 1876 was there a hollow in the bayou at that place?

A. Yes, sir; there was a channel there with banks of a considerable depth.

166 Q. It was a good deal deeper than the rest of the bayou there at that point, was it not?

A. There was a dam or fill above that, and above that dam or fill there was another pool of water, and there was one point that there was some water below that point in 1876. I was surveying in the bayou then, and after I came back in the bayou I aimed to get the channel where it intersected the river.

167 Q. How much water was there in the river in 1876 above low-water mark when you were surveying?

A. I had a record once of it as shown by the gauge, but I do not remember it. I have looked for it and I do not find it. I think there was a little over five feet, between five and six feet, above low-water mark in the Ohio river.

168 Q. At the time you were surveying?

862 A. To the best of my recollection. I had a record of it because I wanted to fix the points at which I ran out to the river with reference to that gauge; but I have not been able to find that record; it was in a memoranda book. That is my recollection—between five and six feet above low-water mark by the gauge at Evansville.

169 Q. And this was a pond that was standing in the bayou at that time?

A. This was a pond standing in the bayou at that time. There were other places between that and the mouth of the bayou.

170 Q. Had there been any rains previous to the time you were surveying in 1876, do you remember?

A. I do not remember that there had been any unusual heavy rains, although that was an unusual stage of water for that season of the year; just as it is this year even, a very unusual stage.

171 Q. Do you mean an unusually low stage?

A. No, sir; this is an unusually high stage for this season.

172 Q. You mean in 1876 it was an unusually low stage?

A. It was in September I made this warrant on the lower end of the island; but it was not an unusually low stage, but it was rather lower water than usual.

173 Q. Was it in 1875 you made a survey between the Cronnenberger's tract and the Barnett land?

863 A. No, sir. In 1876 I surveyed the lower end of Green River Island and across the bayou below Cronnenberger's and Barrett's to the Indiana State line, and surveyed down then as far as Walden & Pfafflin run that line, and then went into the bayou and traced the bayou channel to the river at the mouth, what was then the mouth of the bayou; and then later than that, in 1878, I surveyed this line up here that we speak of that came out near to Cronnenberger's and Barnett's.

174 Q. I misunderstood you about the dates.

A. Cronnenberger and Barnett's land there is in the neighborhood of the Angel tract.

175 Q. In 1876, when you were laying the warrant at the lower end of the island, what month of the year was it?

A. September.

176 Q. What was the condition of the bayou channel at the place where you were working at that time?

A. Where I crossed it on the upper line of what is now the Coleman tract there, there was about four feet of water in a pool in the bayou at that point. I sounded it to ascertain whether we could wade across and carry our chain.

177 Q. How long was that pool?

A. It must have been two or three hundred yards. I did
864 not go to the lower end of it, but it extended up on both sides of where I was some distance.

178 Q. Below that pool again was a dry place, and below that again there was another pool where I saw those weeds yesterday, where there was standing water there yesterday. There was a pool there in 1876, and below that again there was another dry place, and there was some water at different places in the bayou.

179 Q. In June, 1878, when you were running a line between Cronnenberger's and Barnett's, you stated there was a pool at that point, did you?

A. In June, 1878; yes, sir. There was a pool where we crossed.

180 Q. Well, between those two lines, that is all that is necessary. I asked you whether, when you were surveying the line between Cronnenberger's and Barnett's land in 1878, there was a pool in the bayou between those two lines?

A. The line that I had reference to was the lower line of the Henry Angel tract of land on the island, and the Cronnenberger and Barnett tract is higher up than that.

181 Q. Then specify what two lines you do mean that you were surveying in June, 1878. I simply want to identify these pools you have been speaking of.

A. The survey that I made there in 1878 was in the neigh-
865 borhood of where cross-section number 5 comes in.

182 Q. There was a pool, then, in 1878, in June, in the neighborhood of cross-section number 5, on map "C?"

A. Yes, sir; the lower line of Henry Angel's land on the island. If I said it was near Cronnenberger's and Barnett's I was mistaken.

183 Q. If you say that you think in 1876 a 26-feet rise in the river would have filled a pool in the bayou ten feet, to what pool do you refer?

A. Referring to the pool below the road at the crossing to the Coleman land on the island.

184 Q. Near what cross-section on map "C" is that?

A. Near cross-section number 4; just below that road.

185 Q. In other words, you mean to state that in 1876 a rise of a little more than sixteen feet——

A. (Interrupting.) No; I did not say that.

187 Q. That a rise of a little over sixteen feet——

A. (Interrupting.) I did not say sixteen feet.

188 Q. You said that a rise of twenty-six feet would fill a pool ten feet deep?

A. Yes, sir; to the best of my judgement.

189 Q. A rise of twenty-six feet would put ten feet of water at that point?

A. Yes, sir; that is what I believe.

190 Q. Then why would not a rise of sixteen feet in the river make the water flow into the bayou?

A. A rise of sixteen feet?

866 191 Q. If twenty-six feet would put ten feet of water in the bayou at cross-section number 2, near the mouth of the bayou, why would not a rise of sixteen feet in the river be water enough to flow back into the bayou?

A. Well, there may have been a higher fill between that pool and the mouth of the bayou.

192 Q. Do you think there was a higher fill than that?

A. Well, there was a pool there at that time and a higher place below it.

193 Q. You think in 1876 the mouth of the bayou was more than sixteen feet above low-water mark?

A. I traced the bayou channel to its intersection with the river, and I do not think that there was more than between five and six feet above low-water mark at that time.

194 Q. If the bayou channel was only five or six feet above low-water mark, then why would not the water flow back into the bayou?

A. Well, there were obstructions that prevented.

195 Q. How high were the obstructions that were between cross-section number 2 and the mouth of the bayou?

A. There were high places between cross-section number 2 and the mouth. I could not say as to their exact height, but they were high enough to dam the water back above that cross-section number 2 below where that cross-section is at the McAllister tract

867 of land. There was a great pool of water there.

And further the witness saith not.

(Signature waived.)

N. P. Robinson, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. Cunningham, Esq.:

1 Q. State your name.

A. N. Perry Robinson.

2 Q. What is your age?

A. I was sixty-four last Monday.

3 Q. Where do you live?

A. I live in Henderson, Kentucky.

4 Q. How long have you lived here?

A. I have lived here twenty-one years.

5 Q. Where did you live before that time?

A. I lived a mile and a half from the head of Green river towhead, as it is called on this side, in Kentucky.

6 Q. Where did you live before you come there?

A. Well, in 1833 and 1834 I lived in Evansville.

7 Q. Were you acquainted with Green River Island when you lived in Evansville?

A. Yes, sir; I traveled up and down this road here (indicating on the map) frequently. I had an uncle that lived right up
868 there at the head of that chute, and I lived right near Evansville, and I used to go back and forth frequently to his house.

8 Q. Did you go along the bayou between the island and the Indiana shore?

A. No, sir; went along the Indiana shore.

9 Q. Along the Indiana shore of the bayou?

A. Yes, sir; right along the bank of the bayou.

10 Q. Were you along there frequently?

A. I was along there five or six or seven times a year; probably a dozen.

11 Q. At all seasons of the year?

A. Yes, sir.

12 Q. At your first recollection how many places, if any, were there where one could walk across the bayou at any season of the year?

A. I do not think there was any at all that I knew of.

13 Q. Were you acquainted with it from one end to the other?

A. I went from one end to the other, as far as my recollection serves me.

14 Q. Was the water running in and out all times?

A. It was running, it seemed, at all stages. It was running at all stages of water at that time—not so much at low stages as common.

15 Q. At your first recollection, how far was it from the outer banks of that bayou—from one to the other?

869 A. I would say it was one hundred and fifty to two hundred yards.

16 Q. How wide was the stream there through it?

A. I think, from one hundred and fifty to one hundred and seventy-five feet at an ordinary stage of water. I cannot exactly state now the width of it at low water.

17 Q. Did boats at that time pass through the bayou in an ordinary stage of water?

A. Yes, sir; frequently Green river boats went through it, and some of these little packets.

18 Q. Were there any large trees growing on the second banks?

A. No, sir; there was not at that time, and very few small ones on the second bank.

19 Q. Were there large trees growing on the outer banks?

A. The high banks?

20 Q. Yes, sir.

A. Yes, sir; there was large trees on the high banks.

21 Q. How did those trees grow?

A. They were leaning sort of in that position (illustrating) over the water, over the bayou.

22 Q. Did you ever travel through there on a steamboat?

A. No, sir; I do not think I ever did.

23 Q. Do you remember a steamboat known as the James Robb?

A. Yes, sir.

24 Q. What kind of a boat was that, as to size?

A. A large-size side-wheel New Orleans and Louisville
870 packet.

25 Q. State whether you ever saw that boat passing through the chute.

A. I do not say that I saw her pass through it, but she was about two-thirds of the way from the lower end of it up the chute taking on corn. I passed right on down by her—my brother and myself—while she was taking on corn, going to Evansville in a skiff, and while we were at Evansville she backed out at the lower end of the chute.

26 Q. Do you know how she had gotten to where that corn was?

A. No, sir; I could not say as to that; I did not see her go in.

27 Q. What was said at the time about how she got in the bayou?

A. I do not know what was said at the time about how she got in.

28 Q. At your earliest recollection, what was the direction of the entrance to the bayou as compared with the force of Green river?

A. Well, the maps would give you some idea of it better than I could tell you, I reckon; but it ran nearly straight with the bayou as it came on with the river, but as it came up the bayou it ran nearly straight out—at the head.

29 Q. Do you mean on a line with Green river?

A. Yes, sir; more in a direct line with the mouth of
871 Green river.

30 Q. Do you mean that the line of Green river extended would have about run through the bayou?

A. Nearly in a direct line with the mouth of the bayou, right angling across the Ohio. The direction of Green river as it came into the Ohio ran nearly direct to the head of the bayou or chute—pretty nearly on a direct line across the river.

31 Q. Do you know where the Aikens place in Indiana is?

A. Yes, sir.

32 Q. At your earliest recollection how far was the entrance of the bayou from a section line which is on the west side of that place—the lower side?

A. It was not but a very little off from that line; I could not say whether it was a section line or just a line between two individuals. This line was called the Garrett line and the McAllister line at that time, and it ran in here, and it came in almost exactly even with the upper end of the bayou at that time.

33 Q. Did the mouth of the bayou change its position any after that time, that you know of?

A. Yes, sir.

34 Q. When did you first know the bayou?

A. I knew the bayou in 1834.

35 Q. And then how long were you along and about it?

872 A. Well, I was along and about it from 1834 to 1867 frequently, and familiar with it.

37 Q. How far do you think the mouth of the bayou—the entrance to the bayou, I mean—shifted between those years?

A. I think it must have gone down here some two hundred and fifty or three hundred yards.

38 Q. Do you know where Buck Island is, as it is called?

A. No; I do not think I do. That is the little island that was right in the head of the chute, was it not?

39 Q. Yes, sir.

A. Yes, sir.

40 Q. Did any islands or rises come in the bayou between the years that you first knew it and 1867? Did any little islands appear?

A. Tow-heads or tussocks, you might call them. There was one right here (indicating) where you turn. There was one right in there, a little island or tow-head, whatever you may call it. That was all the island that I ever saw in it.

41 Q. How far was that island that you speak of below the Aikens line?

A. I think it was some 300 yards, probably, from the Aikens line down to that.

42 Q. From a point in the road about opposite that island how did the road run, going up the river?

A. Well, it ran right straight up the bayou or chute there.

873 The chute turned a little bit here (indicating), and the road ran up in that way until it struck the river, leaving a space in here (indicating) between the river and the road at that time.

43 Q. How much of a space was that?

A. I suppose there was, maybe, seven or eight or ten acres; maybe more.

44 Q. Do you remember the road being changed up there about that island?

A. Yes, sir.

45 Q. How was that changed?

A. It was changed from this direct line here around this place and in that direction up the river (indicating).

46 Q. Turning to the right as you go up?

A. Yes, sir; and then turning to the left up the river. It came up straight in this way (indicating) and turned in in that way (indicating).

47 Q. Who made the change in that road?

A. To the best of my recollection, Mr. Corrydon Garrett made it.

48 Q. Was there any pond between the line of the old road and the river up at that place?

A. It was hardly to, say, between the old road and the river. The road ran right across the end of it.

49 Q. Was this new road made across any part of that pond?

A. No, sir.

50 Q. How far was that from the lower end of the pond?

874 A. It was a right smart little piece; I could not say exactly how far.

51 Q. How was that road made?

A. This new road?

52 Q. Yes, sir.

A. It was brought around here and carried up on this sand that had formed in there.

53 Q. Do you know whether any sort of foundation was made for any part of it?

A. No, sir; no foundation ever made that I knew of.

54 Q. Was there any drain from that pond into the bayou?

A. There was after it was made; there was none when I first knew it.

55 Q. After the road was made?

A. After this road was changed here then there was a sewer put in there from the pond into the bayou or island chute.

56 Q. What was that sewer for?

A. They called it a culvert, I believe.

57 Q. What was it put there for?

A. To drain this pond.

58 Q. Has that been filled up?

A. I think it has pretty much filled up. It has been in cultivation a good many years, I know that. I think it has pretty well filled up.

875 59 Q. As the entrance of the chute or bayou moved down the river where did the land form, to the Indiana shore or to the island?

A. Formed on the head of the Indiana shore, where this road turned in here, and runs on.

60 Q. How much land is there between where the road used to run and the river and between the head of the island and the Aikens line—how much was there at your last knowledge of it?

A. I could not say; but my judgment from where the chute ran here to where it runs now, there must be between ten and fifteen acres of land there.

61 Q. Do you remember whether or not there were any old trees along between where the road turns in and the Aikens line?

A. Old trees?

62 Q. Were there any old trees where the old road used to run along there?

A. Yes, sir; there were some.

63 Q. Did these trees grow straight or lean?

A. They were pretty much all cut away after this road was turned here. These trees were cut away until it got up to the Aikens line, and there the trees were standing yet; right where the bayou came in, at my first recollection of it, they were standing there in 1867; but I could not state how these trees were below that, and along that bayou there, exactly, but they were mostly little, poor trees.

876 Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

64 Q. Where were you born?

A. I was born in Gibson county, Indiana.

65 Q. Where did you live next?

A. I stayed there until I was six years old or eight years old. My father moved to Kentucky.

66 Q. What part of Kentucky?

A. Right opposite Evansville; and stayed there until 1831 or 1832.

67 Q. Then where did you move to?

A. Moved to Evansville, and stayed there in 1833 and 1834.

68 Q. Then where did you move to?

A. Moved to Kentucky, three miles above the island here—three miles above town.

69 Q. Above Henderson?

A. Above Henderson.

70 Q. How long did you live there?

A. Three years.

71 Q. Where did you move to then?

A. In 1839 I moved out here within two miles of Green river, or one mile and a half—either a mile and a half or it is near three-quarters of a mile—right opposite the Green river tow-head.

72 Q. On the Kentucky side?

A. Yes, sir.

877 73 Q. Where did you move to then?

A. I lived there 31 years, and then I moved here to Henderson.

74 Q. That was until 1870—that brings it down to 1870, does it not? You lived there from 1839 to 1870?

A. Yes, sir.

75 Q. Then where did you move to?

A. I went up here along Green river and stayed there for a little bit.

76 Q. Then where did you move to?

A. Here to Henderson.

77 Q. How old were you when you were living in Evansville?

A. I was nine to ten years old the two years I lived there.

78 Q. The only time, then, you lived on the Evansville side of the river near Green River Island was when you were nine and ten years old, was it?

A. Yes, sir; that was when I lived in Evansville.

79 Q. For the remainder of the time since that time you have lived on the Kentucky side?

A. Yes, sir.

80 Q. Now, what was the occasion of your going up and down on the Indiana side near the Green River Island bayou after you left Evansville?

A. After I left Evansville?

81 Q. Yes, sir.

878 A. I had an uncle living up there, and I frequently went up there, and I stayed with him several days and would go with him in his wagon to Evansville and back.

82 Q. What was your father's name?

A. John McC.

83 Q. Where did he live?

A. Right where the house—not right where the house is, but right opposite to where the widow Aikens now owns the farm.

84 Q. Did I understand you that he lived this side of where Mrs. Aikens lives now—a short distance; is that what you mean?

A. He lived all but in front of where her house is—where his house stood. It has fallen in the river. It was almost right in front of that house, where he lived at that time. It might have been a few yards above or below. It could not have been 50 yards from in front of her door, towards the river bank.

85 Q. Did you ever have occasion to cross to Green River Island?

A. Yes, sir; I have since that time, but I did not at that time.

86 Q. When did you first cross to Green River Island?

A. I could not state that exactly.

87 Q. About how long ago?

A. Oh, in 1839 I was on the island frequently.

879 88 Q. How did you get across to the island?

A. Went across from this side to the island.

89 Q. How did you cross the bayou?

A. Well, I believe during 1836, '37, and '38 I probably crossed that bayou maybe as much as a dozen times.

90 Q. How did you cross it?

A. In a skiff or ferry-boat.

91 Q. Did you ever cross it any other way?

A. No, sir; never did.

92 Q. At what season of the year did you cross over to the island?

A. Most all seasons of the year.

93 Q. What were you crossing for?

A. Well, my father hired me to blacksmith in Evansville—to blow and strike for him in 1838, and I went across to that island and went across to the chute and crossed it and walked down the other side of the bayou.

94 Q. Where did you cross the chute?

A. Right back of Colonel McClain's farm.

95 Q. How far is that from Evansville?

A. I suppose half way of the chute, from the mouth to the head of it.

96 Q. Were there any crossings of the bayou at that time?

A. Not that I knew of; I never knew of any at that time.

880 97 Q. Do you know that there were not any crossings at that time?

A. I am satisfied there was none—not any dry crossings. There were some passing through on horseback.

98 Q. You think at that time that people could cross on foot?

A. No, sir; I do not think they could cross it on foot. I know

that I never found it any place that I could cross it, and I passed there at all seasons of the year during that year.

99 Q. During what year?

A. 1838. Well, I say 1838; it might have been the latter part of 1838 and the first part of 1839.

100 Q. That would be the fall and winter of 1838 and the spring of 1839?

A. Yes, sir.

101 Q. You were not there during the summer months at all?

A. Yes, sir; I expect I crossed it in the summer months, but not that year.

102 Q. When did you first cross it in the summer months?

A. I could not say now; I could not recollect exactly as to the time.

103 Q. How did you cross it when you crossed it in the summer?

A. Crossed it in a skiff or canoe.

104 Q. How did you cross it when you did not cross it in a skiff?

A. In a ferry-boat.

881 105 Q. Why did you cross it in skiffs?

A. That was the only crossing I knew of. At that time a ferry-boat was kept there.

106 Q. Did you ever cross the bayou in the month of July in your life?

A. Oh, yes, sir; I have crossed it many times in July—every month and all months in the year.

107 Q. Have you crossed it in the month of August?

A. Yes, sir.

108 Q. Have you crossed it in the month of September?

A. I have crossed it, I expect, nearly every day in the year, take it altogether.

109 Q. Between what years were you doing that?

A. I would not say any certain years that I crossed it that often, but from 1839 up to 1867 I crossed it almost weekly, traveling back and forth.

110 Q. When did you first begin to notice any crossings where wagons crossed the bayou?

A. I think about 1852 was about the first that there was any dry-land crossing on it.

111 Q. Where were those crossings?

A. I think about a mile from the head of it.

112 Q. Near whose place?

A. It was part of a tract of land that belonged to this Widow Aikens' husband at that time or the Aikens' family. I don't — which of them it belonged to. There seemed to be a farm of it.

882 113 Q. When you first knew Green River Island did the people who live on it keep horses and mules?

A. On the island?

114 Q. Yes, sir?

A. Yes, sir.

115 Q. And it was their universal custom, was it, when you first knew the island, to haul their produce to the banks of the bayou

and ferry it across, and then put it on the wagon again and take it down to Evansville?

A. They generally hauled down to the bayou and put it on the ferry-boat, wagon and all, and took it on up the bank, and all went to Evansville.

116 Q. Where was the ferry?

A. About the middle of the island chute, as near as I can come at it.

117 Q. Near what place?

A. Square back of Colonel McClain's place, on the island.

118 Q. Who run the ferry?

A. An old gentleman by the name of Garrett, father of this Corydon Garrett spoken of.

119 Q. How wide was the ferry across there?

A. I could not say exactly how wide—100 to 150 feet.

120 Q. Was that ferry there in 1834?

A. It was in 1834, and on up to 1852; but I do not think the old gentleman Garrett kept it that long.

121 Q. Who kept it before Mr. Garrett?

883 A. I think a man by the name of Jack Cochran kept it after old man Garrett had it.

122 Q. Did you ever take a team across on that ferry?

A. No, sir.

123 Q. Or walk across it when teams were on it?

A. Yes, sir; I have crossed in the ferry-boat when teams went over on it.

124 Q. Was that a public ferry?

A. Yes, sir; it was kept for coal, to the best of my recollection; they paid ferriage on it the same as on any other ferry.

125 Q. What kind of a ferry-boat was it?

A. A very good ferry most of the time.

126 Q. What kind of a ferry-boat was it—a flat-boat?

A. Well, a hand flat.

127 Q. How did they propel it?

A. With oars.

128 Q. For what purpose did you cross the bayou in any years except 1838 and 1839, when you were going down to Evansville for your blacksmithing?

A. Well, it was my nearest way from where I live to get there.

129 Q. To get to Evansville?

A. Yes, sir.

130 Q. Did you row across to the island and walk across the island?

A. Yes, sir; and then walked down the road.

884 131 Q. And then go down to the ferry?

A. Walked across the island to the ferry, and then crossed and went down the road on the Indiana side.

132 Q. How many times in each year do you suppose you made that trip?

A. Well, I could not state how many times I made it. I made

the trip about every two weeks that year I stayed at Evansville at work.

133 Q. I am not speaking of that time now; I am speaking of the remainder of the time, except the latter part of 1838 and 1839.

A. I could not say. I had divers occasions to cross it. Sometimes I was working on the island for Colonel McClain, and had to go to Evansville for my tools. Sometimes I know Colonel McClain crossed there with a horse after the road got so, and after 1852 I crossed my horse without his ferry at his home place and rode down to Evansville—after the year 1852.

134 Q. After 1852 you mean your crossed the crossing without a ferry?

A. Crossed then at a dry time without ferrying. I would go over there and get a horse from his overseer and go down frequently.

135 Q. Did you ever cross the bayou at a time when the water was at its lowest point in the Ohio river or at a very low point in the Ohio river?

885 A. I could not say that I have at the very lowest point.

136 Q. Well, at a very low point?

A. I have crossed it frequently at very low stages of water.

137 Q. Did you cross it prior to 1852 at very low stages of water?

A. I do not think there is but very few crossings could be crossed on horseback at that time.

138 Q. At what time?

A. 1852.

139 Q. You think there were a few crossings in 1852?

A. There were, maybe, as much as two or three places that could be crossed.

140 Q. I thought you said in 1852 the first crossing was made?

A. I think it was; but I say I think there was but one or two or three places that could be crossed up to that time, to the best of my knowledge.

141 Q. Where were those two or three places where it could be crossed in 1852?

A. One of them was about three-quarters of a mile from the lower end of it, and another one not a great ways below this little island they were speaking of.

142 Q. When were these crossings made?

A. Whether he put the first of them in in 1851 or 1852 I
886 could not say positive, but I know that is about the earliest crossing, in my recollection.

143 Q. You mean to say that was the first crossing that was built?

A. No; there was no crossings built at that time that I ever knew of. They just crossed on the sand—forded it. Where there would be water they would drive through it. I think maybe there was one place there, about three-quarters of a mile above the lower end of it, that could be crossed afoot.

144 Q. In 1852?

A. Yes, sir.

145 Q. On the dry, natural ground?

A. Yes, sir; I think maybe there was.

146 Q. But you do not think you could have crossed over before that time?

A. If they did it before that I never had heard of it.

147 Q. You do not know that they could have crossed it in times of low water?

A. I say if they had *been* I think I would have heard of it.

148 Q. Why would you have heard of it?

A. I was living over there and going backwards and forwards to Evansville every few weeks in a skiff.

149 Q. When you went from your place in a skiff which way did you generally go, down the main channel?

A. Went down the river and back up the bayou.

150 Q. Did you ever come up the bayou in a skiff when the
887 water was at a very low stage in the Ohio river?

A. Well, no; I cannot say that I ever did come up in a very low stage.

151 Q. You could have come up the bayou when the water was at a very low stage in the Ohio river, at the time of your earliest recollection?

A. Yes, sir; I could have done it in my first recollections very well.

152 Q. At a time when the water was at a low stage?

A. In 1839 up to 1867, at a right low stage, a person could come through there at a low stage very handily—up to 1852, probably, at an ordinary stage.

153 Q. I am not speaking of an ordinary stage at all?

A. Well, what I should have said was——

154 Q. (Interrupting). I am speaking now of a very low stage, low-water mark?

A. You could not have gone up there in 1852 at a low stage of water.

155 Q. Could you have gone up there in the lowest stage of water, in 1834, in a skiff?

A. Yes, sir; without any trouble.

156 Q. How do you know it?

A. I was very frequently up there with a skiff. I don't know that I went up there through it that year, but I was up there frequently fishing when I was a boy.

157 Q. Were you up there fishing in 1834, in the summer
888 months?

A. Yes, sir; frequently. Four or five of us boys at Evansville would go up the bayou fishing.

158 Q. Will you swear that in the year 1834 you ever went up the bayou in a skiff at the time when the water was at a very low point in the Ohio river?

A. Yes, sir; all the summer through we were frequently up there.

159 Q. And you went through the bayou in a skiff?

A. I did not say we went through; but the current was running

down pretty strong to run a skiff around. I recollect that pretty sensibly.

160 Q. How do you know that you could have gone up the bayou in 1834 in times of lowest water?

A. By passing this road up to my uncle's I could see water passing down, plenty of water to let the skiff go through either way.

161 Q. Did you ever pass up that bayou, when the water was at a low stage in the Ohio river, in the year 1834?

A. I think I passed up at all stages of water.

162 Q. In the year 1834?

A. In 1833 and 1834.

163 Q. You were then from nine to ten years old?

A. Yes, sir; I was born in 1824.

164 Q. Did you observe particularly what the stage of water was when you were nine or ten years old?

A. I could not say that I did; but the water drawed
889 my ideas a good deal. It was an attraction and I watched it to see the maneuvers of it.

165 Q. At what season of the year was it that the steamer James Raub was up in the bayou taking corn?

A. I think about the first of April, if I am not mistaken.

166 Q. How high was the water in the Ohio river at that time, and in what year was it?

A. I think it was in 1854, to the best of my recollection; it was either 1853 or 1854.

167 Q. How high was the water in the Ohio river at that time?

A. It was a little above medium stage?

168 Q. What do you call medium stage?

A. What I call a medium stage is a good boating stage; it was a little above a good boating stage of water; it might probably have been in some of the back low sloughs, but it was not over the general farm land.

169 Q. How much water do you suppose the steamer James Raub drew?

A. I suppose she would draw from ten to twelve feet when loaded.

170 Q. Was she loaded at that time?

A. She had on a pretty fair load.

171 Q. Did you see her load?

A. I did not see her load it on, but I saw her when she
890 came up there to Evansville. Her guards were down to the water, and I believe she was loaded.

172 Q. Do you remember distinctly about her guards being down to the water?

A. I could not say they were right slap down on the water. There was a very little space between them and the water, if any.

173 Q. How did you happen to notice her guards were down to the water?

A. Well, I reckon I noticed her because I rowed around her with my skiff when she was lying at Evansville.

174 Q. When you say the head of the bayou has moved down the

river about 200 yards do you consider that the pond you spoke of was originally part of the bayou?

A. No, sir; I do not think it was originally part of the bayou. It don't look in the right direction. I think it was a natural pond of itself.

175 Q. From what do you judge that the head of the bayou has moved?

A. Just the position of it, and seeing it every year, as the water would be high water and low water—seeing the position of it.

176 Q. Were you up there every year?

A. I worked eight or ten years right opposite, at the mouth—right in front of it—from 1852 up to 1864.

177 Q. Did you frequently go across on to that island at that time?

891 A. Yes, sir; I frequently went across; pretty near every two weeks I went to Evansville in a skiff.

178 Q. Between what years was that when you went to Evansville in a skiff?

A. 1852 to 1864.

179 Q. When you went to Evansville in a skiff did you go anywhere near that island—near the head of the bayou?

A. Sometimes went across and went down through it—most always—without the river was very low—came up through it.

180 Q. Did the head of the bayou shift any between the time when you first knew it, in 1834, up to 1852?

A. Yes, sir; some.

181 Q. How much did it shift?

A. I do not suppose it had gone much more than half way from where it is now to where it was when I first knew it. I think it had gone away about half way of the distance.

182 Q. When you first knew the bayou how much water did it take in the Ohio river to make the water flow in at the head of the bayou?

A. It did not take any.

183 Q. How far could the water get into the head of the bayou when the water was at the lowest stage in the Ohio river when you first knew it?

892 A. It went into it all the time when I first knew it—high and low water. There was a steady current running through it.

184 Q. You swear that in 1834 there was a steady current running through there in all seasons of the year?

A. Yes, sir.

185 Q. You swear that upon your knowledge and observation as a boy of eight or nine years?

A. To the best of my recollection.

186 Q. That is all you swear upon with regard to the year 1834—your observations as a boy from eight to nine years old?

A. Yes, sir.

187 Q. You swear positively to that fact?

A. I think, to the best of my recollection, it carried water through there at all stages of water.

188 Q. As a boy your knowledge of that bayou was gained from your fishing excursions?

A. I could not say in 1833 and 1834 I ever went up clear through it in a skiff, but I know that I was frequently up in it a mile or two, or maybe further, frequently, and fishing at all stages of water and, I suppose, in all the summer months.

189 Q. You know you were there during every summer month during the year 1834?

A. I think I was—every month until cold weather comes; from the time the fishing season commenced in the spring until it
893 got too cold in the fall for us to go out and stay out fishing.

190 Q. You say you never heard of Buck Island?

A. I do not know as I ever heard it called by that name. They must have named that since 1867. I knew but very little about it since 1867, as I told you in the beginning.

191 Q. I understood that you had been familiar with the head of the island since 1834.

A. I was familiar with the whole island chute from 1834 to 1867.

192 Q. You never heard of Buck Island?

A. No; I do not think they had ever given that any name, but I recollect of this little island being right in there where the bayou now turns.

And further the witness saith not.
(Signature waived.)

894 HENRY M. BALL, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by Hon. J. PROCTOR KNOTT:

1 Q. State your name.

A. Henry N. Ball.

Q. Where do you live and what is your profession?

A. I reside in Henderson. My profession is that of civil engineer and surveyor.

3 Q. Examine the tracing map I now hand you, marked Exhibit "W," and say what it is.

A. It is a tracing of the original map drawn for the Henderson Land Company in the land grant from a survey taken in the year 1797 by Colonel Thomas Allen. The map is on file from which I took the tracing in the clerk's office of the Henderson county court; and the record of the survey—the notes of the survey—are in Deed Book "A," in that office, with Colonel Allen's signature and General Hopkins', who was agent of the company, and his approval is given to it on page 24 of that book.

4 Q. Is that a true copy?

A. That is an exact copy.

5 Q. As far as it purports to be, of that map?

A. Yes, sir; it is an exact copy.

895 Cross-examination.

Questions by ALPHEUS H. SNOW, Esq.:

6 Q. You state in your certificate that this is a tracing of a map showing the Ohio river and locating Green River Island. How do you know that this map locates Green River Island?

A. The certificate is that it located that portion—is that portion of the map on which the island is; it is an exact tracing of the map.

7 Q. Does the map of which this a tracing purport to locate Green River Island?

A. The map has no notes whatever upon it except the land divisions on the Ohio river and branches running into it. It has no mention of the island or I would have put it on. I made an exact copy of it as it is.

8 Q. Has the grant any mention of the island?

A. No, sir; I do not know about that.

Mr. KNOTT: No, sir; it just calls for the bank of the river.

9 Q. In what year does the map of which this is a tracing purport to have been made?

A. Purports to be made in the year—well, the map does not state; there is nothing upon the map to show when it was made; but it is referred to in the deed of our partition, drawn in
896 1797, and Colonel Allen certifies that he took his note—finished his notes in that year; and, of course, referring to that, the map was made in that time. He also in his certificate mentions the next map, which I suppose refers to that, although there is no mark upon the map.

10 Q. Where was the land in controversy?

Mr. KNOTT: Perhaps I can explain that. This is the Henderson grant, made about the beginning of the present century. This land was in controversy, and they made a partition among the parties, and this is the map that was filed, with their deed of partition, in the clerk's office. It did not go to the other side of the river; they just came up to the river.

11 Q. You may state what is the west boundary of the Henderson grant, of which this map purports to be a copy?

A. I do not know what line is the termination of the grant—that is, I do not remember anything to designate it. The portion of the map there is on the Ohio river, but it does not extend to either the south, east, or west boundary of the grant.

12 Q. What was the north boundary of the grant?

A. The Ohio river.

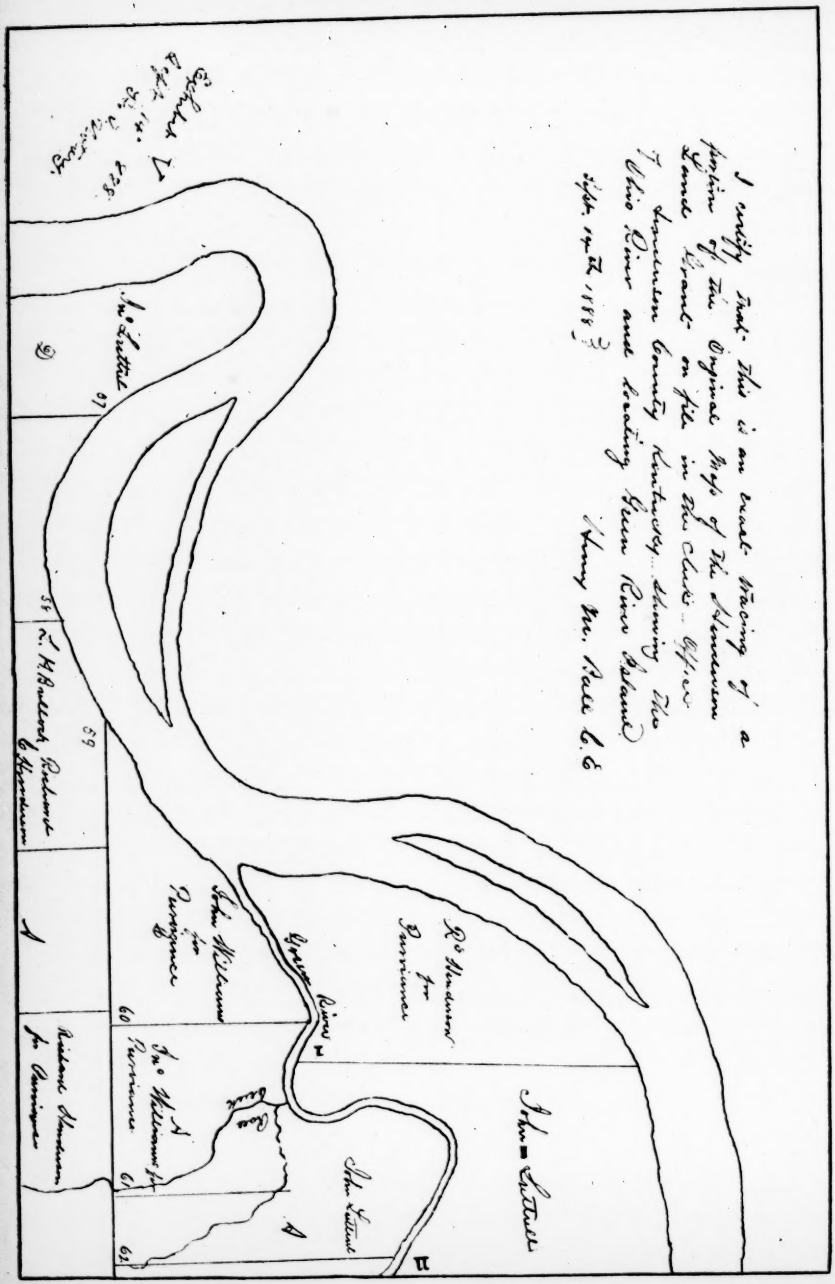
13 Q. Do you mean the bank of the Ohio river on the Kentucky side was the north boundary of the grant?

897 A. The meanders of the river, as I understand it.

14 Q. On the Kentucky side?

A. Yes, sir.

Exhibit V.


I certify that this is an exact tracing of a portion of the Original Map of the Henderson Land Grant on file in the Clerk's Office of Henderson County Kentucky showing the Ohio River and locating Green River Island.
Sept. 14th 1888
Henry M. Ball C.E.
Exhibit V
Sept. 14. 1888
Jno Luttrell
L. H. Bullock Richard C. Henderson
John Williams for Purviance
Rd Henderson for Purviance
Green River
Creek
Jno Williams for Purviance
John Luttrell
Richard Henderson for Purviance
John Luttrell
57
58
59
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62

15 Q. So that the grant did not include any islands in the Ohio river?

A. No, sir.

Re-examination.

Questions by Hon. J. PROCTOR KNOTT:

16 Q. That does not purport to be a copy of the whole Henderson survey at all?

A. No, sir; only a portion sufficient to show what is now called Green River Island on that map.

17 Q. Well, the paper from which you took this tracing—what is its general appearance now, as to its age?

A. It looks as though it was made probably from 80 to 100 years ago. It is in bad shape; it has to be backed with linen.

And further the witness saith not.

(Signature waived.)

898 Mr. KNOTT: I will pass this tracing referred to by the witness, Henry M. Ball, over to the notary to attach to the testimony. It is stipulated that it is to be taken in lieu of the original. It may be marked as Exhibit "V."

Mr. SNOW: All objections to the paper marked Exhibit "V" on account of its being a mere copy are waived; other exceptions, if any, being reserved.

Mr. KNOTT. That is right.

The paper above referred to being in the words and figures following, to wit:

(Here follows diagram marked Exhibit V.)

899 STATE OF INDIANA, *Vanderburgh County:*

I, Harold Taylor, a notary public for the State of Indiana and commissioner, by agreement of counsel, to take the foregoing depositions, certify that the above-named Phillip B. Matthews, Samuel E. King, William Beach, John W. Beach, Robert Scroggins, N. Perry Robinson, and Henry M. Ball, witnesses, were, in my presence and by R. H. Cunningham, Esq., a notary public of Kentucky, first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said depositions were reduced to writing by me; that the complainant was present by its counsel, Alpheus H. Snow, Esq., and Daniel B. Kumler, Esq., and that said depositions were taken at the office of R. H. Cunningham, Esq., in the city of Henderson, county of Henderson and State of Kentucky, on the 13th and 14th days of September, A. D. 1888, between the hours of eight o'clock a. m. and six o'clock p. m. of said days, and that the several exhibits herein appearing were by me duly attached hereto.

Seal Harold Taylor, Notary Public, Indiana.

In testimony whereof I have hereunto set my hand and notarial seal this 1st day of December, A. D. 1888.

HAROLD TAYLOR,
Notary Public.

900 In the Supreme Court of the United States.

THE STATE OF INDIANA
vs.
THE STATE OF KENTUCKY.

The complainant in the above-entitled cause is hereby notified that on the 28th day of September, 1888, at the law office of R. H. Cunningham, No. 211 First street, in the city of Henderson & State of Kentucky, between the hours of ten o'clock a. m. and six o'clock p. m. of said day, before an officer authorized by the laws of the State of Kentucky to take depositions, the respondent will proceed to take the depositions of witnesses to be used and read in evidence on the trial and hearing of said cause, and will, if necessary, continue such taking from day to day, between the hours aforesaid or pursuant to adjournment, until said depositions are completed.

Dated this Sept. 27th, 1888.

P. W. HARDEN, *Att'y Gen'l,*
J. PROCTOR KNOTT &
R. H. CUNNINGHAM,
Att'ys for State of Ky.

We acknowledge service of the above notice this 28th day of September, 1888.

McDONALD, BUTLER & SNOW,
For Complainant.

901 Deposition of John C. Atkinson, a witness produced and sworn to before me, a notary public for the State of Indiana, at Evansville, in the county of Vanderburgh, State of Indiana, at the office of the clerk of the United States circuit court, in said city of Evansville, county of Vanderburgh, and State of Indiana, on the 28th day of September, 1888, pursuant to the annexed notice and by agreement of counsel.

This deposition was taken on the part of the respondent in a certain action now pending in the Supreme Court of the United States, wherein The State of Indiana is complainant and The State of Kentucky respondent.

902 JOHN C. ATKINSON, being first duly sworn to tell the truth, the whole truth, and nothing but the truth relating to said cause, deposeth and saith as follows:

Examination-in-chief.

Questions by R. H. CUNNINGHAM, Esq.:

1 Q. What is your name and age?
A. John C. Atkinson; my age is sixty-eight years.
2 Q. What is your residence?
A. Henderson county.
3 Q. How long have you resided there?
A. All my life; born there.
4 Q. Were you acquainted with Willie Sugg?
A. He was county surveyor.
5 Q. Were you acquainted with John E. McCallister?
A. Yes, sir.
6 Q. And Edmund Talbott, formerly of Henderson county?
A. I was acquainted—well, I was acquainted with the two and knew Edmund Talbott. I was very young at the time. He was the surveyor at Henderson.
7 Q. What was Willie Sugg's occupation?
A. He was a farmer here, and was surveyor of the county.
8 Q. Are those men living or dead?
A. They are all three dead. Squire McCallister, the last one, died several years ago.

And further the witness saith not.
(Signature waived.)

903 Mr. CUNNINGHAM: I offer in evidence a certified copy of the pleadings, etc., in the case of Doe on demise of Slaughter *vs.* Garrett, in the United States circuit court for the 6th district of Kentucky, which the notary will please mark as Exhibit No. 1 and attach the same to the testimony.

The paper above referred to being in the words and figures following, to wit:

904 Pleas before the circuit court of the United States for the 6th circuit and district of Kentucky, at Frankfort.

DOE, on Demise of SLAUGHTER, Pl'ff,
vs.
GARRETT, Def't.

Be it remembered that heretofore, to wit, on the 5th day of November, in the year 1821, came John Doe, on the demise of Smith Slaughter, by his attorney, into the clerk's office of this court and filed the following declaration in ejectment, to wit:

UNITED STATES OF AMERICA,
Circuit Court of Kentucky District, } *sct:*

John Doe complains of Richard Roe, for that on the first date of March, in the year 1831, at the district and circuit aforesaid, Smith Slaughter, heir of John Slaughter & citizen of the State of Virginia, had demised and to farm let to the said John Doe a tract of land containing a large number of acres, to wit, six hundred acres, being that certain piece of ground lying and situate at the upper end of the first large island in the Ohio river below the mouth of Green river, in Henderson county, district & circuit aforesaid, patented or granted by the Commonwealth to the said John Slaughter,
905 with its appurtenances; to have and to hold the same to the said John Doe, his heirs, &c., from the last day of February, 1821, to the full — & term of fifty years thence next ensuing, and fully to be complete- & ended; and also for that on the first day of April, in the year 1821, at the district and circuit aforesaid, the said Smith Slaughter *the said Smith Slaughter* and Zephariah Doe & Mary, his wife, late Mary Slaughter, had demised and to farm let to the said John Doe another tract or parcel of land containing a large number of acres, to wit, six hundred acres, being that certain piece or tract of land lying & situate at the upper end of the first large island in the Ohio river below the mouth of Green river, in Henderson county and district aforesaid, patented or granted by the Commonwealth to the aforesaid John Slaughter, with its appurtenances; to have and to hold the same to the said John Doe, his heirs, &c., from the last day of March, 1821, to the full — & term of fifty years thence next ensuing, and fully to be complete- and ended, by virtue of which said several demises the said John Doe entered into the said several tracts or parcels of land, with their appurtenances, and was thereof possessed; and, being so thereof possessed, the said Richard Roe afterwards, to wit, on the -- day of ——, in the year 1821, at the district and circuit aforesaid, with force and arms, entered
906 into the said tracts or parcels of land, with their appurtenances, which had been granted, demised, and to farm let to the said John Doe, in manner and form aforesaid and for the terms aforesaid, which has not yet ended or expired, and ejected & turned the said John Doe out of the said land, with its appurtenances, and other wrongs & enormities, then & there did to him the said John Doe, and against the peace and dignity of the United States of America, and to the damage of the said John Doe of $5,000.

Therefore he sues, &c.

LABAN JONES,
Attorney for Plaintiff.

Messrs. John Garrett, George Bohall, Robert G. Sladyan, Ann Elsworth, Catherine Olds:

I am informed that you are in possession and claim title to the premises in the foregoing declaration of ejectment mentioned, or to some part thereof, and my being sued in this action as casual ejector

and having no claim or title to the premises, do advise you to appear on the first day of the next November term of the circuit court of the United States for the district of Kentucky, to be holden at Frankfort, by some attorney of that court, and then and there, by a rule of that court, cause yourself to be made a defendant in my stead; otherwise I shall suffer judgment to be entered up against me and you will be turned out of possession.

RICHARD ROE.

August 20th, 1821.

"COMMONWEALTH OF KENTUCKY, } *sct:*
Henderson County, }

907 This day came Hugh Knox, personally before me, a justice of the peace in and for said county, and made oath that he did, on the 26th day of September, 1821, deliver to John Garrett, George Bohal, Robert G. Sladyen, Ann Elsworth, & Catharine Olds, the tenants in possession of the premises, a true copy of the foregoing declaration & notice in ejectment & informed them of the nature thereof by telling them that it was an action of ejectment for the land which they are in possession of, and advised them to appear in the first day of the next term of the circuit court of the United States for the district of Kentucky, to be holden at Frankfort, then and there employ an attorney to defend the said suit.

NATH & RUGGLES, *J. P.*

Certified this 27th day of Sept., 1821.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1821, came the tenants in possession, each for himself, by his attorney, and, on motion, they are severally admitted defendants, each for himself. Whereupon they enter into the common rule, confess the lease entry and ouster in the declaration supposed, and agree to insist upon the title only at the trial, and
908 for plea severally say they are in nowise guilty in manner and form as the plaintiff against themhath declared; and of this they put themselves upon the country, and the plaintiff likewise; therefore let a jury come, &c.

And on the motion of the lessor of the plaintiff aforesaid, by his attorney, time is given him until the sixth day of the next term of this court to give security for costs of this suit.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, until which time this cause was continued—

Came the defendants, by their attorney, and on his motion it is ordered that unless the lessors of the plaintiffs do, on or before the 15th day of August next, give other and better security *security* for costs in this cause that the same will stand dismissed; and, on motion of the plaintiff, by his attorney, this cause is continued until the next term. It is therefore considered by the court that the defendants recover of the lessors of the plaintiff their costs at the present term expended.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1829 (until which time this cause was continued)—

It is ordered by the court that the plaintiff be ready for
909 trial at the next term of this court or that, on failure thereof, his cause will be dismissed.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1834 (until which time this cause was continued), came the plaintiff's attorney and discontinued this suit as to Robert Slayden; and thereupon came a jury, to wit, William Ratliffe, John P. Thatcher, William Merriwether, John Buford, Morgan B. Chinn, Hamilton Crockett, Joshua Wilhite, John Stonestreet, Joseph Roberts, Robert Snell, Joseph Brown, William S. Church, who, being elected, tried, and sworn well and truly to try the issue joined, upon their oaths do say: "We, of the jury, find the defendants guilty of the trespass and ejectment in the declaration mentioned, and do assess the plaintiff's damage by reason thereof to one cent."

It is therefore considered by the court that the plaintiff recover of the defendants his term yet to come and unexpired of it and to six hundred acres of land, with its appurtenances, lying & situate at the upper end of the first large island in the Ohio river below the mouth of Green river, in Henderson county, and also his costs in this behalf expended.

And the writ of *habese facias possessionem* is awarded the plaintiff.

910 Circuit Court of the United States, District of Kentucky, at Frankfort.

I, Thos. B. Ford, clerk of the court aforesaid, do certify that the foregoing is a true and complete copy of all the orders, pleadings, and proceedings in the case mentioned therein, as appears of record in my said office.

[SEAL.] Witness my hand and the seal of said court this 12th day of Sept., 1888.

THOMAS B. FORD, *Clerk.*

911 Mr. CUNNINGHAM: I also offer in evidence an exemplified copy of the grant by the State of Virginia to John Slaughter, dated February 10, 1790, which the notary will please mark as Exhibit No. 2, and attach the same to the testimony.

The paper above referred to being in the words and figures following, to wit:

912 COMMONWEALTH OF VIRGINIA:

I, Fitzhugh Lee, Governor of the Commonwealth of Virginia' certify that Wm. R. Gaines, whose name is signed to the within certificate, bearing date the 19th day of September, 1888, is, and was at the time of signing, register of the land office of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such certificate, and that to all his official acts full faith, credit, and authority are due and ought to be given.

In testimony whereof I have hereunto set my hand as Governor and caused the great seal of the State to be [SEAL.] affixed. Done at the city of Richmond this 19th day of September, A. D. 1888, and in the 113th year of the Commonwealth.

FITZHUGH LEE.

By the Governor:
H. W. FLOURNOY,
Secretary of the Commonwealth and Keeper of the Seals.

913 Beverly Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of part of a military warrant No. 2498, issued the 14th day of February, 1784, there is granted by the said Commonwealth with [unto] John Slaughter a certain tract or parcel of land, containing 600 acres by survey bearing date the 1st day of March, 1785, lying and being in the district set apart for the officers and soldiers of the Virginia Continental line, on the first large island in the Ohio below the mouth of Green river, and bounded as followeth, to wit: Beginning at three cotton trees on the south side of the island, running up the meanders of the river S. 75° E. 114 poles, thence east 120 poles; thence N. 79° E. 110 poles; thence S. 86° E. 260 poles to the upper point of the island; thence down the north side of the same N. 15° W. 56 poles; thence N. 52° W. 35 poles; thence N. 66° W. 453 poles; thence N. 51° W. 65 poles to an ash and two hickories; thence S. 18° W. 285 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Slaughter and his heirs forever.

In witness whereof the said Beverly Randolph, Esquire,
914 Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 10th day of February, in the year of our Lord 1790, and of the Commonwealth the 14th.

BEVERLY RANDOLPH.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office.

Witness my hand and seal of office this 19th day of September, 1888.

[SEAL.] W. R. GAINES,
Reg. Land Office, &c.

915 Mr. CUNNINGHAM: I also offer in evidence exemplified copies of grants by the State of Kentucky to John Slayden, Robert Terry, Green & Green, Robert Terry, Robert Terry, Jesse Lane, Talbott & Sugg, Barnett & McCollister, and J. A. Coleman for the various amounts of lands and at the different dates therein

stated, which the notary will please mark, respectively, as Exhibits No. 3 to No. 12, inclusive, and attach them to the testimony.

The papers above referred to being in the words and figures following, to wit:

916 Gabriel Slaughter, Esq., lieutenant governor & acting Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of Kentucky land office warrant number 2244 there is granted by the said Commonwealth unto John Slayden a certain tract or parcel of land, containing four hundred acres by survey bearing date the 24th day of March, one thousand eight hundred and eighteen, lying and being in the county of Henderson, on the Green River Island, and bounded as followeth, to wit: Beginning at a cotton-wood standing on the south bank of the island, running north twenty-six west seven poles to a cotton-wood; thence north thirty-five west thirty-three poles to a hackberry; thence north forty west forty poles to a paw-paw; thence north sixty west twenty-six poles to a box elder; thence north seventy west one hundred poles to a hackberry; thence north eighty-seven west four hundred and thirty poles to a box elder; thence south ten east one hundred and sixty poles to two cotton-wood trees on the bank of the river; thence up the river, with the meanders thereof, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Slayden and his heirs forever.

917 In witness whereof the said Gabriel Slaughter, Esq., lieutenant governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 30th day of September, in the year of our Lord one thousand eight hundred and eighteen, and of the Commonwealth the twenty-seventh.

[SEAL.]

GAB'L SLAUGHTER.

By the lieutenant governor:
JOHN POPE, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to John Slayden as the same appears of record in my office.

Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

918 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause [SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

John Slayden. Grant, 400 acres. Henderson county. Examined and recorded. Book "D," "K. L. W.," page 35. No. 1599.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

919 John Adair, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of two Kentucky land office warrants, Nos. 7199 & 10522, there is granted by the said Commonwealth unto Robert Terry a certain tract or parcel of land, containing three hundred and forty acres by survey bearing date the 23rd day of October, one thousand eight hundred and twenty-three, lying and being in the county of Henderson, on the first large island in the Ohio river below the mouth of Green river, and bounded as followeth, to wit: Beginning at four hickories on the bayou on the north side of the island, corner to Slaugher's military survey, and running down the bayou, with its several meanders, north sixty degrees west fifty-four poles; thence north fifty-four degrees west one hundred and sixty-six poles; thence north forty-six degrees west fifty-six poles to two elms and a box elder on the bank of the bayou; thence south one degree east three hundred and fifty-two poles to a stake on the bank of the Ohio river; thence south fifty-two degrees east one hundred poles; thence south
920 sixty-seven degrees east forty-four poles to three cotton-wood trees and a mulberry tree, corner to Slaughter's military survey; thence north twenty-one degrees east two hundred and seventy poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Terry and his heirs forever.

In witness whereof the said John Adair, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth
[SEAL.] to be affixed, at Frankfort, on the 24th day of June, in the year of our Lord one thousand eight hundred and twenty-five, and of the Commonwealth the thirty-third.

JOHN ADAIR.

By the Governor:

THOMAS B. MONROE, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to Robert Terry as the same appears of record in my office.

Witness my hand and official seal, at office, in Frankfort,
[SEAL.] Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

921 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec'ty State.

Robert Terry. Grant, 340 acres. Henderson county. Examined and recorded. Book "O," "K. L. W.," page 276. No. 8606.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

922 Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of a Kentucky land office warrant No. 14799 there is granted by the said Commonwealth unto Gabriel G. Green and William Green a certain tract or parcel of land, containing four hundred acres by survey bearing date the

13th day of October, one thousand eight hundred and twenty-five, lying and being in the county of Henderson, on the first large island in the Ohio below the mouth of Green river, and bounded as followeth, to wit: Beginning at two elms and a hackberry on the bayou, corner to Robert Terry, thence down the bayou, with its meanders, N. 46° W. 24 poles, N. 37° W. 60 poles, N. 41° W. 32 poles, N. 31° W. 40 poles, N. 38° W. 51 poles to an elm, box elder, & hackberry on the bank of the bayou; thence S. 51° W. 92 poles across the island to 3 maples and a cotton-wood on the bank of the Ohio; thence up the river, with its meanders, S. 8° E. 124 poles, S. 14° E. 80 poles, S. 29° E. 100 poles, S. 38° E. 180 poles to five maples and two cotton-woods on the bank of the river at a stake, corner to Robert Terry; thence with Terry's line N. 2° E. 325 poles to the beginning,
923 with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Gabriel G. Green and William Green and their heirs forever.

In witness whereof the said Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth
[SEAL.] to be affixed, at Frankfort, on the 8th day of May, in the year of our Lord one thousand eight hundred and twenty-six, and of the Commonwealth the thirty-fourth.

JOSEPH DESHA.

By the Governor:
J. C. PICKETT, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to Gabriel G. Green and William Green as the same appears of record in my office.

[SEAL.] Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

924 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

Green and Green. Grant, 400 acres. Henderson county. Examined and recorded. Book "Q," "K. L. W.," page 381. No. 10373.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

925 Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting;

Know ye that by virtue and in consideration of a Kentucky land office warrant No. 14794 there is granted by the said Commonwealth unto Robert Terry a certain tract or parcel of land, containing eighty-one acres by survey bearing date the 15th day of June, one thousand eight hundred and twenty-five, lying and being in the county of Henderson, on the first large island in the Ohio below the mouth of Green river, called Green River Island, and bounded as followeth, to wit: Beginning at a small pecan on the river side of the island, corner to Staton, and running N. 76° west 52 poles to two cotton-woods, corner to Terry; thence with Terry's line north 18° east 276 poles to two hickories, corner to Terry, on the bayou; thence up the bayou S. 60° east 48 poles to three hickories, corner to Staton; thence with Staton's line S. 17° W. 262 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Terry and his heirs forever.

In witness whereof the said Joseph Desha, Esq., Gov-
926 ernor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth
[SEAL.] to be affixed, at Frankfort, on the 6th day of June, in the year of our Lord one thousand eight hundred and twenty-six, and of the Commonwealth the thirty-fifth.

JOSEPH DESHA.

By the Governor:
J. C. PICKETT, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to Robert Terry as the same appears of record in my office.

[SEAL.] Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

927 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed.
Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

Robert Terry. Grant, 81 acres. Henderson county. Examined and recorded. Book "S," "K. L. W.," page 274. No. 10754.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

928 Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of a Kentucky land office warrant No. 14293 there is granted by the said Commonwealth unto Robert Terry a certain tract or parcel of land, containing forty-nine acres by survey bearing date the 13th day of October, one thousand eight hundred and twenty-five, lying and being in the county of Henderson, on the first large island in the Ohio river below the mouth of Green river, and bounded as followeth, to wit: Beginning at an elm, hackberry, and box elder on the bayou, corner to Gabriel G. Green and William Green, thence with their line S. 51 west 92 poles to three maples *to three maples* and a cotton-wood on the bank of the river, corner to G. G. Green and William Green; thence down the river, with its meanders, N. 8 west 78 poles, N. 8 east 92 poles, N. 15 east 10 poles to the lower point of the island; thence S. 41 east 144 poles with and up the bayou to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Terry and his heirs forever.

In witness whereof the said Joseph Desha, Esq., Governor
929 of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be
[SEAL.] affixed, at Frankfort, on the 21st day of June, in the year of our Lord one thousand eight hundred and twenty-six, and of the Commonwealth the thirty-fifth.

JOS. DESHA.

By the Governor:
J. C. PICKETT, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to Robert Terry as the same appears of record in my office.

Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

[SEAL.] THOS. H. CORBETT,
Regt. Land Office.

930 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

Robert Terry. Grant, 49 acres. Henderson county. Examined and recorded. Book "U," K. L. W., page 52. No. 11151.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

931 James T. Morehead, Esq., lieut. & acting governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of part of a land office warrant No. 22398 there is granted by the said Commonwealth unto John E. and Lawrens C. McCallister a certain tract or parcel of land, containing fifty acres by survey bearing date the 5th day of October, one thousand eight hundred and thirty-two, lying and being in the county of Henderson, on the Green River Island, and bounded as followeth, to wit: Beginning at two maples standing on the south bank of bayou, running up the bayou, on the top of the bank, S. 70 E. 180 poles to a stake in John Slayden's line; thence with his line 80 poles to his corner, a cotton-wood; thence W. 30 poles to 3 cotton-woods, McAllister's corner; thence S. 10 poles to a cottonwood on the bank of the river, with the several meanders thereof,

80 poles to a stake standing on the north bank of the bayou; thence down the bayou, on the top of the bank, with the State line 280 poles to a cotton-wood standing on the top of the bank; thence a direct course to the beginning, with its appurtenances; to
932 have and to hold the said tract or parcel of land, with its appurtenances, to the said John E. and Lawrens C. McAllister and their heirs forever.

In witness whereof the said James T. Morehead, Esq., lieut. & acting governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of
[SEAL.] the said Commonwealth to be affixed, at Frankfort, on the 4th day of May, in the year of our Lord one thousand eight hundred and thirty-four, and of the Commonwealth the forty-second.

J. T. MOREHEAD.

By the lieut. & acting governor:
J. J. CRITTENDEN, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to John E. and Lawrens C. McAllister as the same appears of record in my office.

[SEAL.] Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

933 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

John E. McAlister. Grant, 50 acres. Henderson county. Examined and recorded. Book D², "K. L. W.," page 2. No. 17434.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
Total pay	4 00

53–o

934 J. T. Morehead, Esq., lieut. and acting governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of a land office warrant No. 22399 & pt. of No. 21968 there is granted by the said Commonwealth unto Jesse Lane, ass'ee of James Hillyer and John E. McAllister, a certain tract or parcel of land, containing one hundred and fifty acres by survey bearing date the 1st day of June, one thousand eight hundred and thirty-three, lying and being in the county of Henderson, on the Green River Island, and bounded as followeth, to wit: Beginning at 2 sycamores standing on the north bank of the bayou, running S. 10 W. 60 poles to a hackberry, thence N. 80 W. 290 poles to an elm and pawpaw; thence N. 15° E. 110 poles to a sycamore standing on the north bank of the bayou; thence up the bayou on the top of the bank to the beginning——

Registered 27th January, 1835.

—with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Jesse Lane and his heirs forever.

935 In witness whereof the said James T. Morehead, Esq., lieut. & acting governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of [SEAL.] the said Commonwealth to be affixed, at Frankfort, on the 27th day of July, in the year of our Lord one thousand eight hundred and thirty-five, and of the Commonwealth the forty-fourth.

JAMES T. MOREHEAD.

By the lieut. & acting governor:
WILL. OWSLEY, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of grant to Jesse Lane, ass'ee of James Hillyer and John E. McAllister, as the same appears of record in my office.

Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 8th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

936 COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause the [SEAL.] great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec'y State.

Jesse Lane. Grant, 150 acres. Henderson county. Examined and recorded. Book "F²," "K. L. W," page 428. No. 19153.

Fee	$1 00
Off. cert. & seal	1 00
	2 00
Affixing State seal	2 00
	4 00

937 Robert P. Letcher, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of a w't from the Henderson county court and part of another w't there is granted by the said Commonwealth unto Edmund Talbot and Willie Sugg a certain tract or parcel of land, containing three hundred and fourteen acres by survey bearing date the 3d day of February, one thousand eight hundred and forty, lying and being in the county of Henderson, on the Green River Island, and bounded as follows, to wit: Beginning at a hackberry standing on the north bank of said island, corner of a survey made for Jesse Lane, running with Lane's line across the bayou N. 15 E. 30 poles to a stake at or near the sycamore called for in said Lane's survey on the north bank of said bayou; thence down, with the several courses of the top of said bank, N. 64 W. 108 poles, N. 60 W. 82 poles. N. 55 W. 88 poles, N. 50 W. 124 poles, N. 40 W. 124 poles, N. 36 W. 100 poles, N. 29 W. 86 poles to Joseph Rennard's houses; thence N. 10 W. 320 poles to a stake; thence N. 30 W. 142 poles to the lower corner of the wall forming the landing at Evansville; thence S. 72 W. 60 poles to a stake on the sand bar; thence S. 15 E. 317 poles to the corner of 49 acres surveyed in the name of Robert Terry, at the lower
938 point of said island; thence with the several courses of the top of the bank of said island and up the north side thereof S. 26 E. 144 poles, S. 36 E. 160 poles, S. 40 E. 124 poles, S. 50 E. 124 poles, S. 55 E. 90 poles, S. 60 E. 82 poles, S. 64 E. 127 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Edmund Talbot and Willie Sugg and their heirs forever.

In witness whereof the said R. P. Letcher, Esq., Governor of the

Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the Commonwealth to be affixed, at Frankfort, on the 14th day of July, in the year of our Lord one thousand eight hundred and forty-one and of the Commonwealth the fiftieth.

[SEAL.] R. P. LETCHER,
Secretary of State.

By the Governor:
JAS. HARLAN.

939 STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office in and for the State aforesaid, do hereby certify that the foregoing and within is a true and correct copy of a patent in the name of Edmund Talbot and Willie Sugg as appears of record in my office.

In witness whereof I have hereunto set my hand and [SEAL.] caused the seal of office to be affixed at Frankfort, on the 21st day of November, 1888.

THOS. H. CORBETT,
Regt. Land Office for Kentucky.

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth of Kentucky, hereby certify that the above and foregoing attestation is in due form and by the proper officer.

In testimony whereof I have hereunto attached my signature and caused the seal of the Commonwealth to be affixed this 21st day of November, 1888.

[SEAL.] S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

Talbot & Sugg. Grant, 314 acres. Henderson county. Examined and recorded. Book "7," "C. C. O.," page 400. No. 3186.

Register's fee	$2 00
Sec'y state	2 00
	$4 00

940 Gabriel Slaughter, Esq., lieutenant governor and acting Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of a certificate No. 607, State price paid, without interest, granted by the county court of Henderson in 1804, agreeably to an act of Assembly for settling and improving the vacant lands in this Commonwealth, there is granted by the said Commonwealth unto Samuel O. Barnett and Æneas McCollister, ass'ees of Willie Sugg, the same having been

exposed to sale in the name of Nathan Walden for the non-payment of the fourth instalment due thereon, and purchased by said Sugg, a certain tract or parcel of land containing one hundred and twenty acres by survey bearing date the thirteenth day of November, one thousand eight hundred and five, lying and being in the county of Henderson, on the Green River Island, and bounded as followeth, to wit: Beginning at a black walnut tree on the bank of the main river, running north six east one hundred and twenty poles to a May pole and black walnut on the north side of the island; thence south seventy-five east one hundred and seventy poles to a willow
941 and cotton-wood; thence south twenty-five east ninety-six poles to two cotton-woods on the south side of the island; thence north eighty-six west two hundred and twenty poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel O. Barnett and Æneas McCollister and their heirs forever.

In witness whereof the said Gabriel Slaughter, Esq., lieutenant governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 4th day of June, in the year of our Lord one thousand eight hundred and nineteen, and of the Commonwealth the twenty-eighth.

By the lieutenant governor:

[SEAL.] GABRIEL SLAUGHTER.

JOHN POPE, *Secretary.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office in and for the State aforesaid, do hereby certify that the foregoing and within is a true and correct copy of a patent in the name of Samuel O. Barnett and Æneas McCollister as appears of record in my office.

942 In witness whereof I have hereunto set my hand and caused the seal of office to be affixed, at Frankfort, on the 21st day of November, 1888.

[SEAL.] THOS. H. CORBETT,
Reg. Land Office for Kentucky.

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth of Kentucky, hereby certify that the above and foregoing attestation is in due form and by the proper officer.

In testimony whereof I have hereunto attached my signature and caused the seal of the Commonwealth to be affixed this 21st day of November, 1888.

[SEAL.] S. B. BUCKNER.

By the Governor:

GEO. ADAMS,
Secretary of State.

Barnett & McCollister. Grant, 120 acres. Henderson county. Examined and recorded. Book 24, "L. G. R.," page 81. No. —.

Register fee	$2 00
Sec't'y state	2 00
	$4 00

943 James B. McCreary, Governor of the Commonwealth of Kentucky, to all whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of an order from the Henderson county court there is granted by said Commonwealth unto J. A. Coleman one hundred and thirty acres by survey bearing date the 15th day of September, one thousand eight hundred and seventy-six, lying and being in the county of Henderson, on Green River Island, above the city of Evansville, Indiana: Beginning at two willows & maple in George Atkinson's line (bearing) from corner to first willow S. 63° W., distance 11 links; bearing from corner to second willow S. 32¼ W., distance 24 links; bearing from corner to maple N. 60¾ E., distance 1 pole 10 links; thence with Atkinson's line N. 52° E., passing the corner of a stable used by J. W. Williams, who lives on Atkinson's land, 95 poles 6 links, to a hackberry stump & box elder, corner to Atkinson's tract; thence, in the same course, N. 52° E. (crossing Green River Island bayou) 37 poles 21 links to a stake in the line between the States of Indiana & Kentucky, as located in 1875 by D. N. Walden on the part of Kentucky & August Pfafflin on the part of Indiana. Here are marked pointers, as follows: Maple standing in the bayou, bearing from corner S. 38¾° W., distance 2 poles 3 links; 2
944 maples bearing from corner S. 89½° W., distance 2 poles 11 links; 2 elms on the brink of bayou, bearing from corner to first elm N. 47½ W., distance 2 poles 21 links; bearing to second elm from corner N. 48¾ W., distance 3 poles 2 links; thence with the State line N. 31¾ W. 15 poles 9 links to a stone; thence with the State line N. 29¾° W. 54 poles 13 links to a stone marked D. N. W. & A. P., the initials of the names of the surveyors who located the State line; thence with the State line N. 26½° W. 39 poles to a stone marked "A," said to be the township line dividing townships 6 & 7 south of range 10 west of the second meridian, Vanderburg county, Indiana; thence N. 17¼ W. 16 poles to a stake marked 2 cotton-woods, pointers, bearing from stake to first cotton-wood N. 19° W., distance 6 poles 11 links; bearing from stake to second cotton-wood N. 80° W., distance 4 poles 21 links; thence N. 84¾° W. 15 poles 5 links to a point in the center bayou marked 2 cotton-wood pointers, bearing from said point to first cotton-wood N. 12½ W., distance 1 pole 16 links; bearing from said point to second cotton-wood S. 57¼° W., distance 3 poles 19 links; thence down the bayou N. 20¼ W. 33 poles 1 link to a stake on the side of the bayou, marked sycamore pointer, bearing from stake to sycamore 7¾° E., distance 4 poles 20 links; thence down the bayou N. 45¼° W., passing
945 out of the bayou at 36 poles—in all, 54 poles 16 links—to a

stake at the water line of the Ohio river; thence S. 5° W. 296 poles to a point on the sand bar in line with the beginning; thence from said point, in the course of the first line, N. 52° E. 50 poles 16 links to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said J. C. Coleman and his heirs forever.

In witness whereof the said James B. McCreary, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 9th day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Commonwealth the eighty-fifth.

[SEAL.] JAMES B. McCREARY.

By the Governor:
J. STODDARD JOHNSTON, *Secretary.*

946 STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office in and for the State aforesaid, do hereby certify that the foregoing and within is a true and correct copy of a patent in the name of J. A. Coleman, as appears of record in my office.

In witness whereof I have hereunto set my hand and caused the seal of office to be affixed, at Frankfort, on the 21st day of November, 1888.

[SEAL.] THOS. H. CORBETT,
Regt. Land Office for Kentucky.

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth of Kentucky, hereby certify that the above and foregoing attestation is in due form and by the proper officer.

In testimony whereof I have hereunto attached my signature and caused the seal of the Commonwealth to be affixed this 21st day of November, 1888.

[SEAL.] S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

J. A. Coleman. Grant, 130 acres. Henderson county. Examined and recorded. Book "82," "C. C. O," page 79. No. 52311.

Reg. fee	$2 00
Sec't'y state	2 00
	$4 00

947 Mr. CUNNINGHAM: I also offer in evidence exemplified copies of surveys made for John Slayden, Robert Terry, Gabriel G. Green, and William Green, Robert Terry, Robert Terry,

John E. McCallister, and Jesse Lane for land situated on Green River Island and at the dates therein mentioned, which the notary will please mark as Exhibits No. 13 to No. 19, inclusive, and attach them to the testimony; also exemplified copies of the order of the Henderson circuit court in the name of John Narcarrow and the survey made thereon; the order of the Henderson circuit court in the name of Nathan Walden and the survey made thereon, and the order of the Henderson circuit court in the name of Russell Hewitt, together with the survey made thereon, for land situated on Green River Island at the dates therein given, which the notary will please mark as Exhibits No. 20 to No. 25, inclusive, and attach them to the testimony.

The papers above referred to being in the words and figures following, to wit:

948 Surveyed for John Slayden 400 acres of land, by virtue of a Kentucky land office warrant No. 2244, in Henderson county, on the Green River Island, beginning at a cotton-wood standing on the S. bank of the island, running N. 26 W. 7 poles to a cotton-wood; thence N. 35 W. 33 poles to a hackberry; thence N. 40 W. 40 poles to a pawpaw; thence N. 60 W. 26 poles to box elder; thence N. 70 W. 100 poles to hackberry; thence N. 87 W. 430 poles to a box elder; thence S. 10 E. 160 poles to 2 cotton-wood trees on the bank of the river; thence up the river with the meanders thereof to the beginning.

Surveyed March 24, 1818.

EDMUND TALBOT, *S. H. C.*
RED. E. TALBOT, *S. H. C.*

ROBERT SLAYDEN, } *C. C.*
CLIFTON SLAYDEN, }
ISAACK HUNT,
JOHN GARROP,
E. T.,
Housekeepers Present on the Ground.

Kentucky Land Office Warrant No. 2244.

To the principal surveyor of any county within the Commonwealth:

949 This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for John Slayden, his heirs or assigns, the quantity of four hundred acres of land, due unto the said Slayden, in consideration of the sum of eighty dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office on
[SEAL.] the second day of March, in the year of our Lord one thousand eight hundred and eighteen.

Satisfied.

JNO. M. FOSTER, *R. L. O.*

Executed in full.

EDMUND TALBOT, *S. H. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and warrant upon which same is based, in the name of John Slayden, which is on file in my office.

Witness my hand and official seal, at office, in Frank-
[SEAL.] fort, Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

950 Fees:

Copy of survey	$1 00
" " plat	50
" " warrant	50
Official certificate & seal	1 00
	3 00

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

951 Surveyed for Robert Terry, by virtue of two Kentucky land office warrants—one No. 10522, the other No. 7199—three hundred and forty acres of land, in Henderson county, on the first large island in the Ohio river below the mouth of Green river, and bounded as follows: Beginning at four hickories on the bayou on the north side of the island, corner to Slaughter's military survey, and running down the bayou, with its several meanders, N. 60° W. 54 poles; thence N. 54° W. 166 poles; thence N. 46° W. 56 poles to two elms and a box elder on the bank of the bayou; thence S. 1° E. 352 poles to a stake on the bank of the Ohio river; thence S. 52° E. 100 poles; thence S. 67° E. 44 poles to three cotton-wood trees and a mulberry tree, corner to Slaughter's military survey;

thence N. 21° E. 270 poles to the beginning. Surveyed the 23rd day of October, 1823.

JOHN GREEN, *Dep. Sur.*
EDMOND TALBOT, *S. H. C.*

WILLIAM LAMBERT, } *C. C.*
AUSTIN BOHALL, }
ROBERT SLATON &
CLIFTON R. SLAYTON,
Housekeepers on the Ground.
BURNEY HANCOCK, *Md.*

Ex. & rec'd.

Kentucky Land Office Warrant No. 10522.

952 To the principal surveyor of any county within this Commonwealth:

This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for Robert Terry, his heirs or assigns, the quantity of three hundred acres of land, due unto the said Terry, in consideration of the sum of thirty dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office on the 13th day of Nov., in the year of our Lord one thousand eight hundred and twenty-two.

JNO. M. FOSTER, *Rg. L. O.*

Sat'sf'd by Gt.
JNO. M. FOSTER, *R. L. O.*,
By C. H. RENNECK, *D. R.*

Kentucky Land Office Warrant No. 7199.

To the principal surveyor of any county within this Commonwealth:

This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for Robert Terry, his heirs or assigns, the quantity of forty acres of land, due unto the said
953 Terry, in consideration of the sum of four dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office on
[SEAL.] the 23d day of October, in the year of our Lord one thousand eight hundred & twenty-one.

JNO. M. FOSTER, *Rg. L. Of.*

Sat'sf'd by Gt.
JOHN. M. FOSTER, *R. L. O.*,
By C. H. RENNECK, *D. R.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and warrants upon which it is based, in the name of Robert Terry, which is on file in my office.

Witness my hand and official seal at office, in Frankfort, on this 10 day of September,.1888.

Thos. H. Corbett, Regt. Land Office.

954 Fees:

Copy survey	$1 00
" plat	50
" 2 warrants	1 00
Official certificates & seal	1 00
	3 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

955 October 13th, 1825, surveyed for Gabriel G. Green and William Green, by virtue of a Kentucky land office warrant No. 14799, four hundred acres of land on the first large island in the Ohio river below the mouth of Green river, in Henderson county, bounded as follows, viz: Beginning at two elms and a hackberry on the bayou, corner to Robert Terry, thence down the bayou, with its meanders, N. 46° W. 24 poles, N. 37° W. 60 poles, N. 41° W. 32 poles, N. 31° W. 40 poles, N. 38° W. 51 poles, to an elm, box elder, & hackberry on the bank of the bayou; thence S. 51° W. 92 poles across the island to three maples and a cotton-wood on the bank of the Ohio; thence up the river, with its meanders, S. 8° E. 124 poles, S. 14° E. 80 poles, S. 29° E. 100 poles, S. 38° E. 180 poles, to five maples and two cotton-woods on the bank of the river at a stake, corner to

Robert Terry; thence with Terry's line N. 2° E. 325 poles to the beginning.

JOHN GREEN, *D. S.*
EDM'D TALBOT, *S. H. C.*

JOSEPH A. BARNETT &
JAMES McCLAIN,
Housekeepers Present on the Ground.
STEPHEN HAYNE,
JOHN HORSLEY,
Chainmen.
JOHN GREEN, *Marker.*

Ex'd & rec'd.

956 *Kentucky Land Office Warrant No.* 14799.

To the principal surveyor of any county within this Commonwealth:

This shall be your warrant to survey and lay off in one or more surveys (by yourself or deputy) for Will. Green & G. G. Green, their heirs or assigns, the quantity of four hundred acres of land, due unto the said Greens, in consideration of the sum of twenty dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditor of public accounts and his certificate received into the Land Office.

Given under my hand and the seal of the said office on
[SEAL.] the 16th day of April, in the year of our Lord one thousand eight hundred and twenty-five.

(Satisfied.)

JOHN M. FOSTER, *K. L. C.*

This warrant executed in full in my office.

EDMUND TALBOT, *S. H. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and warrant upon which same is based, in the names of Gabriel G. Green and William Green, which is on file in my office.

957 Witness my hand and official seal, at office, in Frankfort,
[SEAL.] Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed.
Done at Frankfort this 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

958 June 15th, 1825, surveyed for Robert Terry, by virtue of a Kentucky land office warrant No. 14794, eighty-one acres of land in Henderson county, on the first large island in the Ohio river below the mouth of Green river, called Green River Island, bounded as follows: Beginning at a small pecan on the river side of the island, corner to Staton, and running N. 76° W. 52 poles to two cotton-woods, corner to Terry; thence with Terry's line N. 18° E. 276 poles to two hickories, corner to Terry, on the bayou; thence up the bayou S. 60° E. 46 poles to three hickories, corner to Staton; thence with Staton's line S. 17° W. 262 poles to the beginning.

ROBERT TERRY, *Md.*
JOHN GREEN, *Dep. Sur.*
EDMUND TALBOT, *S. H. C.*

LEVI HANES & JOHN WILSON, } *C. C.*

WILLIAM GREEN & WM. LAMBERT,
Housekeepers Present on the Ground.

"Ex. & rec'd."

Kentucky Land Office Warrant No. 14794.

To the principal surveyor of any county within this Commonwealth:

This shall be your warrant to survey and lay off in
959 one or more surveys (by yourself or deputy) for Robert Terry, his heirs or assigns, the quantity of one hundred acres of land, due unto the said Terry, in consideration of the sum of five dollars —— cents, current money, paid into the public treasury, the payment whereof to the treasury hath been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office on
[SEAL.] the 16th day of April, in the year of our Lord one thousand eight hundred and twenty-five. 81 as satisfied.

JOHN M. FOSTER, *R. L. O.*

Ex'd in full 4th of June, 1825.

EDRECD. TALBOT, *S. H. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land — of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy

of the original certificate of survey, and warrant upon same is based in the name of Robert Terry, which is on file in my office.

960 Witness my hand and official seal, at office, in Frankfort, [SEAL.] Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

Fees:

Copy survey	$1 00
" plat	50
" warrant	50
" assignment	25
Official certificate & seal	1 00
	3 25

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause [SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

961 October 13th, 1825, surveyed for Robert Terry, by virtue of a Kentucky land office warrant No. 14293, 49 acres of land in Henderson county, on the first large island in the Ohio river below the mouth of Green river, bounded as follows, viz: Beginning at an elm, hackberry, and box elder on the bayou, corner to Gabriel G. Green & William Green, thence with their line S. 51° W. 92 poles to three maples and a cotton-wood, on the bank of the river, corner to G. G. Green and William Green; thence down the river, with its meanders, N. 8° W. 78 poles, N. 8° E. 92 poles, N. 15° E. 10 poles to the lower point of the island; thence S. 41° E. 144, with and up the bayou to the beginning.

JOHN GREEN, *D. S.*
EDM'D TALBOT, *S. H. C.*

JOSEPH A. BARNETT &
JAMES McCLAIN,
Housekeepers Present on the Ground.

STEPHEN HAYNIE &
JOHN HORSLEY, *Chainmen.*
JOHN GREEN, *Marker.*

Ex. & r'c'd.

Kentucky Land Office Warrant No. 14293.

To the principal surveyor of any county within this Commonwealth:

962 This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for Robert Terry, heirs or assigns, the quantity of two hundred acres of land, due unto the said Terry, in consideration of the sum of ten dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer have [has] been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office
[SEAL.] on the 1st day of March, in the year of our Lord one thousand eight hundred and twenty-five.

49 acres satisfied.

JOHN M. FOSTER, *R. L. O.*

On the back of the foregoing warrants are the following endorsements, to wit:

June 14th, 1825, Rob't Terry withdraws the entry of 40 acres on this warrant.

EDMUND TALBOTT, *S. H. C.*

November 12, 1825, for value rec'd I do assign 144 acres of the within warrant to Benjamin Wall.

ROB'T TERRY.

June 16th, 1825, 100 acres of the within warrant entered in my office.

E. TALBOT, *S. H. C.*

Nov. 10, 1825, 31 acres of this entry withdrawn.

E. TALBOT, *S. H.* —.

963 November 17, 1825, 144 acres entered in my office.

E. TALBOT, *S. H. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and the warrant upon which it is based, with the assignment and endorsements thereon, in the name of Robert Terry, all of which is on file in my office.

Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
Rgt. Land Office.

Fees:

Copy survey	$1 00
" plat	50
" warrant	50
" assignment	25
Official certificate & seal	1 00
	3 25

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

964 In testimony whereof I hereto sign my name and cause the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of September, A. D. 1888.

[SEAL.] S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

965 Surveyed for John E. McCallister 50 acres of land, by virtue of Kentucky land warrant No. 22398, in Henderson county, on the Green River Island: Beginning at 2 maples standing on the south bank of bayou, running up the bayou, on the top of the bank, S. 70° E. 180 poles to a stake in John Slaydon's line, thence with his line 80 poles to his corner, a cotton-wood; thence west 30 poles to three cotton-woods, McCallister's corner; thence S. 10 poles to a cotton-wood on the bank of the river; thence up the river, with the several meanders thereof, 80 poles to a stake standing on the north bank of the bayou; thence down the bayou on the top of bank with the State line 280 poles to a cotton-wood standing on the top of the bank; thence a direct course to the beginning.

Surveyed October 5, 1832.

EDMUND TALBOT, *S. H. C.*

ANEAS BARNET,
HENDERSON BARNET, } *C.*
JOHN McCALLISTER,
JOHN HORSTLEY AND
ABRAHAM FRANSWAY,
Two Housekeepers Present.

On the back of said certificate of survey is the following
966 assignments:

"For value received I assign twenty-five acres of the within plat to Lawren C. McCallister and the other twenty-five acres to the heirs of S. O. Barnett, deceased. This the first of March, 1833.

"JOHN E. McCALLISTER."

Kentucky Land Office Warrant No. 22398.

To the principal surveyor of any county within this Commonwealth:

This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for John E. McCallister, his heirs or assigns, the quantity of one hundred acres of land, due unto the said McCallister, in consideration of the sum of five dollars — cents, current money, paid into the public treasury, the payment whereof to the treasury hath been duly certified by the auditor of public accounts and his certificate received into the land office.

Given under my hand and the seal of the said office on the 13th day of June, in the year of our Lord one thousand eight hundred and thirty-two.

JOHN M. FOSTER, *R. L. O.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State
967 of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and assignment thereon, together with copy of the warrant upon which the same is based, in the name of John E. McCallister, all of which are on file in my office.

[SEAL.] Witness my hand and official seal of office, in Frankfort, Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
R'g't'r Land Office.

Fees:

Copy survey	$1 00
" warrant	50
" plat	50
" assignment	25
Official certificate & seal	1 00
	3 25

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

968 [SEAL.] In testimony whereof I hereto sign my name and cause the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of Sept., A. D. 1888.

A. R. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

969 Surveyed for Jesse Lane 150 acres of land, by virtue of a Kentucky land office warrant No. 22399, ass'ee of James Hillyer, and part of a warrant, No. 21968, ass'ee of John E. McCallister, in Henderson county, on the Green River Island: Beginning at 2 sycamores standing on the north bank of the bayou, running south 10° west 60 poles to a hackberry; thence N. 80° W. 290 poles to an elm and pawpaw; thence N. 15° E. 110 poles to a sycamore standing on the north bank of the bayou; thence up the bayou, on the top of the bank, to the beginning.

Surveyed June 1st, 1833.

EDMUND TALBOT, *S. H. C.*

LEWIS SMITH, } *C. C.*
JOHN A. LANE, }
JESSE LANE, *Mk.*

ABRAHAM FRANSWAW,
JOHN GARRET,
Two Housekeepers Present on the Ground.

Ex'd & rec'd.
Rec'd 27 Jan'y, 1835.
Grant issued 27 July, 1835.

Kentucky Land Office Warrant No. 22399.

To the principal surveyor of any county within this Commonwealth:

970 This shall be your warrant to survey and lay off, in one or more surveys (by yourself or deputy), for James Hillyer, his heirs or assigns, the quantity of one hundred acres of land, due unto the said Hillyer, in consideration of the sum of five dollars — cents, current money, paid into the public treasury, the payment whereof to the treasurer has been duly certified by the auditor of public accounts and his certificate received into the land office.

[SEAL.] Given under my hand and the seal of the said office on the 13th day of June, in the year of our Lord one thousand eight hundred and thirty-two.

JNO. M. FOSTER, *R. L. O.*

On the back of the foregoing "warrant" is the following, to wit:

"I assign the within warrant to Jesse Lane this 13th Oct., 1832.
JAMES HILLYER."

STATE OF KENTUCKY:

—, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original plat, certificate of survey, and warrant upon which said plat and certificate of survey is partly based, together with the assignment thereon to Jesse Lane, all of which is on file in my office.

971 Witness my hand and official seal, at office, in Frankfort, Kentucky, on the 10th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

Fees:

Copy survey	$1	00
" plat		50
" assignment		25
Official seal & certificate	1	00
	2	75
Copy warrant		50
	3	25

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause [SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

972 HENDERSON COUNTY, *sct:*

May County Court, 1804.

John Nancarrow this day claimed four hundred acres of land on account of settling the same in conformity to the several acts of Assembly for settling and improving the vacant lands of this Commonwealth, lying and being on Green River Island: "Beginning at a yearling hackberry tree, blazed, standing on the bank of the Ohio river, thence running down the river bank 180 poles; thence across said island, and thence up the bank of the Ohio river to the first-mentioned bounds." Satisfactory proof being made to the court, they are of opinion that the said John Nancarrow hath a right to a settlement of four hundred acres of land, to include the above location, and that a certificate issue accordingly.

A copy. Teste:

A. M. BARBOUR, *C. H. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original order of the Henderson county court in the name of John Nancarrow, which is on file in my office.

973 Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 10th day of September, 1888.

[SEAL.] THOS. H. CORBETT,
Regt. Land Office.

Fees:

Copying warrant	$0 50
Official certificate & seal	1 00
	$1 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

974 Surveyed for Jno. Nancarrow 400 acres of land, by virtue of a certificate from the county of Henderson, in Henderson county, in the Green River Island: Beginning at a hackberry tree, blazed, standing on the bank of the Ohio river, thence running down the river west 100 poles to a cotton-wood and willow; thence N. 60 w't 80 poles to 5 cotton-wood trees; thence N. 30 w't 490 poles to a stake; thence S. 58° E. 210 poles to a hickory on the north bank of the island; thence S. 49° e't 120 poles to 2 hickories; thence S. 85° E. 50 poles to a coffee-nut tree, hackberry, and pawpaw, Wm. Rolefson's beginning corner; thence with his line S. 6° w't 140 poles to a box elder, his corner; thence with another of his lines S. 60° E. 94 poles to a box elder, another of his corners; thence with another of said lines S. 65° e't 32 poles to a box elder in said Rolefson's line; thence S. 6° w't 85 poles to the beginning.

Surv'd Nov. 15th, 1804.

By WILLIE SUGG, *D. S.*,
For EDMUND TALBOT, *S. H. C.*

W. SUGG,
MATHIAS FILL, } *C. C.*
JNO. NANCARROW, *Mat.*

975 STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office in and for the State of Kentucky, do hereby certify that the above and foregoing is a true, full, and perfect copy of the original plat and certificate of survey on file in my office in the name of Jno. Nancarrow for 400 acres of land in the county of Henderson and State of Kentucky.

[SEAL.] Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 7th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

Fees—Copy survey ------	$1 00
" " plat ----------	50
	1 50
Official certificate & seal--	1 00
	2 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

[SEAL.] In testimony whereof I hereto sign my name and cause the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of Sept., A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

976 HENDERSON COUNTY, *sct:*

August County Court, 1804.

Nathan Walden this day claimed four hundred acres of land on account of settling the same in conformity to the several acts of Assembly for settling and improving the vacant lands of this Commonwealth lying on Green River Island: Beginning at a black walnut tree on the bank of the Main river, running N. 6° E. until it strikes the stream on the north side of said island, thence up so as to include the improvement occupied by Elias D. Griffith. Satisfactory proof being made to the court, they are of opinion that the said Nathan Walden hath a right to a settlement of four hundred acres of land, to include the above location, and that a certificate issue accordingly.

A copy. Teste:

AMBROSE BARBOUR, *C. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original order of the Henderson county court, in the name of Nathan Walden, which is on file in my office.

977 Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 10th day of September, 1888.

[SEAL.] THOS. H. CORBETT,
Register Land Office.

Fees:

Copy warrant	50
Official certificate and seal	1 00
	$1 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

978 Surveyed for Nathan Walden 120 acres of land, by virtue of a certificate from the county court of Henderson, in the Green River Island: Beginning at a black walnut tree, on the bank of the Main river, running N. 6° E. 120 poles to a maple & B. walnut tree on the north side of the island, thence S. 75° E. 170 poles to a willow & cotton-wood tree; thence S. 25° E. 96 poles to 2 cotton-woods on the south side of the island; thence N. 86° W. 220 poles to the beginning.

Surveyed Nov. 13th, 1804.

By WILLIE SUGG, *D. S.*,
For EDM'D TALBOT, *S. H. C.*

JNO. NANCARROW, } *C. C.*
ELIAS D. GRIFFITH, }

Ex'd & rec'd. E. T.

Upon the back of said certificate of survey is the following assignment:

"For value received I do hereby assign to Russell Hewett all my right & title, interest and claim, to the within tract of land this 23rd day of October, 1806.

NATHAN WALDEN."

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office in and for the State of Kentucky, do hereby certify that the above and foregoing
979 is a true, full, and perfect copy of the original plat, certificate of survey, and assignment thereon on file in my office, in the name of Nathan Walden, for 120 acres of land in Henderson county, Kentucky.

Witness my hand and official seal, at office, in Frankfort, Kentucky, on this 7th day of September, 1888.

THOS. H. CORBETT,
Regt. Land Office.

Fees—Copy survey ------	$1 00
" " plat---------	50
	1 50
Official certificate & seal--	1 00
	2 50
Copy of assignment------	25
	$2 75

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause
[SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

980 HENDERSON COUNTY, *sct:*

December County Court, 1804.

Russell Hewitt this day claimed two hundred acres of land in addition to his former claim, by virtue of the several acts of Assembly for settling and improving the vacant lands in this Commonwealth: Beginning at John Nancarrow's lower corner, on the south side of Green River Island, in the Ohio, running thence down the island westwardly so far as will, with lines running at right angles, include two hundred acres of land crossing the island. Satisfactory proof being made to the court, they are of opinion that the said Russell Hewitt hath a right to two hundred

acres of land in addition to his former settlements—to include the above location—and that a certificate issue accordingly.

A copy. Teste:

AMBROSE BARBOUR, *C. H. C. C.*

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the foregoing is a true, full, and perfect copy of the original order of the Henderson county court, in the name of Russell Hewitt, which is on file in my office.

981 Witness my hand and official seal, at office, in [SEAL.] Frankfort, Kentucky, on this 10th day of September, 1888.

THOS. H. CORBETT,
Register Land Office.

Fees:

Copy warrant ----------	$ 50
Official certificate and seal_	1 00
	$1 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause [SEAL.] the great seal of the Commonwealth to be affixed. Done at Frankfort 10th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State.

982 Surveyed for Russell Hewitt 200 acres of land, by virtue of a certificate from the county court of Henderson, in the Green River Island: Beginning at 5 cotton-woods in Nancarrow's corner, running N. 65- w't 140 poles to 3 cotton-woods; thence N. 13° E. 280 poles to a hickory and cotton-wood, Sam'l O. Barnett's beginning corner; thence S. 49° E. 120 poles to 2 hickories; thence S. 6° w't 253 poles to the beginning.

Surveyed August 25th, 1805.

By WILLIE SUGG, *D. S.*,
For E'M'D TALBOT, *S. H. C.*

ISAAC SLOVER.
SAMUEL O. BARNETT.
RUSSELL HEWITT, *Mat.*

Ex'd & rec'd.

STATE OF KENTUCKY:

I, Thos. H. Corbett, register of the land office of the State of Kentucky, do hereby certify that the above and foregoing is a true, full, and perfect copy of the original plat and certificate of survey on file in my office in the name of Russell Hewitt for 200 acres of land in Henderson county, Kentucky.

[SEAL.] Witness my hand and official seal of office, in Frankfort, Kentucky, on the 8th day of September, 1888.

THOS. H. CORBETT,
Rgt. Land Office.

983

Fees—Copy survey.	$1 00
" " plat---	50
	$1 50
Official certificate & seal--	1 00
	$2 50

COMMONWEALTH OF KENTUCKY:

I, S. B. Buckner, Governor of the Commonwealth aforesaid, certify that the foregoing attestation is in due form and by the proper officer.

[SEAL.] In testimony whereof I hereto sign my name and cause the great seal of the Commonwealth to be affixed. Done at Frankfort this 8th day of September, A. D. 1888.

S. B. BUCKNER.

By the Governor:

GEO. M. ADAMS,
Secretary of State,
By WILLIS L. RINGO,
Ass't Sec't'y State.

984 Mr. CUNNINGHAM: I will offer in evidence a certified copy of the report of the commissioners, Pfafflin and Walden, in regard to the State boundary line, together with certified copies of deeds for land on Green River Island, which the notary may mark as Exhibit No. 26 and attach the same to the testimony.

The papers above referred to being in the words and figures following, to wit:

985 *Report of Commissioners.*

Whereas the General Assembly of the Commonwealth of Kentucky passed an act entitled An act to fix and determine the boundary line between the States of Indiana and Kentucky above and near Evansville, appeared [approved] 21st April, 1873, and afterwards, in conformity with the provisions of this act, D. N. Walden, of the county of Henderson, Kentucky, was by the Governor of Kentucky duly appointed commissioner to do the act therein speci-

fied; and whereas the General Assembly of the State of Indiana passed an act entitled An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville, and making the same evidence in any dispute, and declaring an emergency, approved 27th February, 1875; and afterwards, in conformity with the provisions of said last-mentioned act, August Pfafflin, of Evansville, Indiana, was by the Governor of Indiana duly appointed commissioner to do the act therein required to be done, said commissioners report that in pursuance of said act and in pursuance of our commissions, duly to us issued, copies of which are herewith filed and hereto attached as a part of this report,

986 we did run a line and made the survey in the manner and form required by said act. We have consulted and have been governed by the surveys originally made by the Government of the United States in the year 1806—the original and only survey made by the United States of said line—and we have further established proper monuments along the line of said survey, whereby the same may be plainly indicated.

And having, on the 17th day of July, 1875, completed said survey, within ten days thereafter, to wit, on the 27th day of July, 1875, we have reduced and now here reduce to writing said survey, pointing out the distances, directions, monuments, and marks, as well as the boundary line now here by us established between the States of Indiana and Kentucky, and other matters appearing on the map or plat hereafter mentioned. Said line divides the counties of Henderson, Kentucky, and Vanderburgh, Indiana, as well as the States of Indiana and Kentucky, and is as follows:

Commencing at a stake on the bank of the Ohio river, on the south line of fractional section fourteen, township seven south, of range ten west, of the second meridian, opposite the mouth of Green river, thence north 82° west 14.00 chains to a stake; thence north 73° west 5.50 chains to a stone marked "M," on the section line dividing fractional sections 14 & 15, 67.57 chains south of the

987 section corner 10, 11, 14, 15, and 0.82 chains north of a sycamore 24, on the bank of the Ohio river; thence north 61¼° west 3.56 chains to a stone; thence north 43¼° west 10.25 chains to a stone; thence north 47¼° west 18.56 chains to a stone; thence north 54¼° west 22.75 chains to a stone; thence north 68¼° west 19.00 chains to a stone; thence north 67½ west 20.50 chains to a stone marked "N," on the section line dividing fractional sections 15 & 16, 15.81 chains south of the section corner 9, 10, 15, 16, mulberry (10″ old tree), S. 66 W. 4 links; thence north 71½° west 7.90 chains to a stone; thence north 62½° west 6.31 chains to a stone; thence north 58½° west 20.00 chains to a stone marked "O," on the section line dividing fractional sections 9 & 16, 29.67 chains west of the section corner 9, 10, 15, 16, sycamore 88″, S. 37½° E. 140 links, sycamore 72°, N. 84¾° W. 115 links; thence north 61¾° west 4.53 chains to a stone; thence north 62½° west 10.00 chains to a stone; thence north 62″ west 34.20 chains to a stone; thence north 57 west 10.00 chains to — marked "P," on the section line dividing fractional sections 8 & 9, 50.00 chains south of sec-

tion corner 4, 5, 8, 9; thence north 57° west 13.84 chains to a stone; thence north 54° west 10.00 chains to a stone; thence north 52¼° west 10.66 chains to a stone; thence north 47° west 35.00 chains to a stone; thence north 41° west 7.12 chains to a stone marked
988 "Q," on the section line dividing fractional sections 5, 88, 58.39 chains west of the section corner 4, 5, 8, 9, stump of old tree (maple), sycamore 56″ N. 77½° E. 29 links, elm 49″ N. 4° E. 76 links; thence north 39° west 10.00 chains to a stone; thence north 37° west 9.00 chains to a stone; thence north 34° west 10.00 chains to a stone; thence north 32° west 8.48 chains to a stone marked "R," on the section line dividing fractional sections 5 & 6, 52.92 chains south of the section corner 5, 6, 31, 321 (3) maple 45″, N. 52 west 38½ links; thence north 31° west 13.68 chains to a stone; thence north 29° west 10.91 chains to a stone; thence north 26¾° west 10.75 chains to a stone; thence north 24½° west 13.78 chains to a stone; thence north 15¼° west 9.85 chains to a stone marked "A," on the township line dividing townships 6 & 7 south, of range 10 west, of the second meridian, old tree standing (elm); thence north 12° west 4.00 chains, opposite the foot of Green River Island.

A map or plat of the lines and survey aforesaid, signed by us as commissioners, is attached to this report and made a part thereof.

Executed and acknowledged by us this — day of ——, 1875.

D. N. WALDEN.
AUG. PFAFFLIN.

989 *Copy of Commission of D. N. Walden.*

In the name and by the authority of the Commonwealth of Kentucky, Preston H. Leslie, Governor of said Commonwealth, to all whom these presents shall come, Greeting:

Know ye that D. N. Walden, having been duly appointed commissioner for the State of Kentucky to execute, in conjunction with a similar commissioner for the State of Indiana, the duty of setting the line dividing the two States, pursuant to the provisions of an act entitled "An act to fix and determine the boundary line between the States of Indiana and Kentucky above and near Evansville," approved April 21st, 1873, I hereby invest him with full power and authority to execute and discharge the duties of said office according to law, and to have and to hold the same, with all the rights and emoluments thereto legally appertaining, for and during the term prescribed by law.

In testimony whereof I have caused these letters to be made patent and the seal of the Commonwealth to be hereunto affixed.

Done at Frankfort the 5th day of June, in the year of our Lord one thousand eight hundred and seventy-three, and in the 82nd year of the Commonwealth.

P. H. LESLIE, *Governor.*
GEO. W. CRADDOCK,
Sec'y of State,
By W. N. BOTTS, *Assistant.*

990 *Copy of the Commission of August Pfafflin.*

The State of Indiana, by Thomas A. Hendricks, Governor, to all who shall see these presents, Greeting:

Whereas it is provided by an act entitled "An act to ascertain the location of the boundary line between the States of Indiana and Kentucky above and near Evansville, and making the same evidence in any dispute, and declaring an emergency," approved Feb'y 27th, 1875, that the Governor be empowered and directed to select a commissioner who shall be a resident of the State of Indiana and a practical surveyor, who shall act with a similar commissioner, to be appointed by the Governor of the State of Kentucky, and make a survey of the line dividing said States, beginning at the head of Green River Island, near and opposite the mouth of Green river, and running thence down the Ohio river to the lower end of said island; therefore know ye that, reposing confidence in the diligence and ability of Aug. Pfafflin, of Vanderburgh county, I do, in the name and by the authority of the State of Indiana, hereby appoint and commission the said Aug. Pfafflin commissioner on the part of the State of Indiana, to execute the purposes of the act aforesaid, to serve as such from this thirteenth day of May, 1875, during the pleasure of the appointing power.

991 In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at the city of Indianapolis, this 13th day of May, in the year of our Lord 1875, the 59th year of the State and of the Independence of the United States the ninety-ninth.

THOMAS A. HENDRICKS,
Governor of Indiana.

By the Governor:
JNO. E. NEFF,
Sec'y of State.

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

Be it remembered that August Pfafflin, a practical surveyor of Vanderburgh county, Indiana, and commissioner appointed by the Governor of the State of Indiana to ascertain the location of the boundary line between the States of Indiana and Kentucky, in conjunction with a similar commissioner appointed by the State of Kentucky, and also David N. Walden, a practical surveyor, a resident of Henderson county, Kentucky, and a commissioner appointed by the Governor of the State of Kentucky to ascertain the location of the boundary line between the States of Kentucky and Indiana, in conjunction with a similar commissioner appointed by the State

992 of Indiana, personally appeared before me, Soren Sorenson, clerk of the Vanderburgh circuit court, and produced the foregoing and annexed report and map, and severally and jointly acknowledged the said report and map, and declared the line de-

scribed in said report and laid down on said map to be the true dividing line between the States of Indiana and Kentucky, above and near Evansville, Indiana, for such distance as required in the respective commissions issued to them by the Governors of their respective States.

In witness whereof I have hereto set my hand and affixed the seal of said circuit court, at the city of Evansville, Indiana, this 30th day of July, 1875.

S. SORENSON, *Clerk.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing report of the commissioners appointed by the States of Indiana and Kentucky, together with the map accompanying said report of the survey of the boundary line between the States of Indiana and Kentucky, was duly filed in my office for record on the 7th day of August, 1875, with the foregoing
993 certificate of acknowledgment of said commissioners before — Sorenson, clerk of the Vanderburgh county court, State of Indiana, thereon endorsed, and the same is, with said certificate and this certificate, truly recorded in my office.

Witness my hand this 13th day of March, 1879.

GEO. W. SMITH, *C. H. C. C.*

No. 1.

This indenture, made this 10th day of June, in the year of our Lord eighteen hundred and twenty-six, between John Sladyen, of the county of Henderson and State of Kentucky, of the one part, and James McClain, of the said county and State, of the other part, witnesseth: That the same John Ladyen, for and in consideration of fifty dollars in hand paid by the said James McClain, the receipt whereof is thereby acknowledged, hath granted, bargained, sold, aliened, and confirmed, and by these presents do hereby sell, alien, and confirm, unto the said James McClain one certain tract or parcel of land lying & being in the Green River Island, in Henderson county, to wit: Beginning at two cotton-wood trees standing on the south side of Green River Island, on the bank of the Ohio river, the beginning corner of the above-named Sladyen two-hundred acre survey, thence running north 18 east 250 poles to a sycamore tree and honey locust hackberry on the north side of said
994 island; thence running down the meanders of the river north 72 W. 54 poles to a stake on the north side of said island; thence running south 18 west 250 poles to a stake on the south side of said island; thence running up the meanders of the river south 72 east one hundred acres, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said James McClain and his heirs forever, free from the claim and claims of the said John Sladyen — his heirs forever.

In testimony whereof I, the said John Sladyen, have hereunto set my hand and affixed my seal the day and year above written.

JOHN SLADYEN. [SEAL.]

Test: —— ——.

HENDERSON COUNTY, *ss:*

This deed of bargain and sale was presented to me in my office on the 10th day of June, 1826, and acknowledged by said John Sladyen to be his act and deed; all which is truly recorded.

Attest: WILL. D. ALLISON, *C. H. C. C.*

995 No. 2.

This indenture, made this 21st of December, in the year of our Lord eighteen hundred and twenty-six, between John Sladyen, of Henderson county and State of Kentucky, of the one part, and Clifton R. Slaton, of the same county and State, of the other part, witnesseth: That the said John Sladyen, for and in consideration of one dollar in hand paid by the said Clifton R. Slaton, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, and conveyed, and by these presents do hereby sell, alien, & confirm, unto the said Clifton R. Slaton one certain tract or parcel of land lying and being in the Green River Island, in Henderson county, to wit: Beginning at two hickories on the north side of the above-named island, thence running S. 18 W. 250 poles to two purkons and cotton-wood trees, on the south side of said island; thence running up with the meanders of the river S. 72 E. 64 poles to four cotton-wood trees; thence N. 18 E. 250 poles to two honey locusts and one maple trees, in the mouth of a drain on the north side of said island; thence running down with the meanders of the river north 72 W. 64 poles to the beginning, containing one hundred acres, be the same more or less, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances,
996 to the said Clifton Slaton and his heirs forever, free from the claim and claims of the said John Sladyen and his heirs forever.

In testimony whereof I, the said John Sladyen, have hereunto set my hand and affixed my seal the day and year above written.

JOHN SLADYEN. [SEAL.]

HENDERSON COUNTY, *ss:*

This deed of bargain & sale was presented to me in my office on the 23rd day of December, 1826, and acknowledged by the said John Sladyen to be his act and deed; all which is truly recorded.

Attest: WILL. D. ALLISON, *C. H. C. C.*

No. 3.

This indenture, made this 15th day of May, in the year 1827, between Clifton R. Slaton, of Henderson county and State of Kentucky,

of the one part, and George Bohall, of the same county and State, of the other part, witnesseth: That the said Clifton R. Slaton, for and in consideration of the sum of three hundred dollars in hand paid by the said George Bohall, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, and confirmed, and by these presents do hereby sell, alien, and confirm, unto the said George Bohall one certain tract or parcel of land lying and being in Green River Island, in Henderson county, to wit: Beginning at two hickories on the north side of the above-named island,
997 thence running south 18 west 250 poles to two pecans & cotton-wood trees on the south side of the said island; thence running up with the meanders of the river south 72 east 64 poles to four cotton-wood trees; thence north 18 east 250 poles to two honey-locust and one maple trees in the mouth of a drain on the north side of said island; thence running down with the meanders of the river north 72 west 64 poles to the beginning, containing one hundred acres, be the same more or less, with the appurtenances; to have and to hold the said tract or parcel of land to him, the said George Bohall, and his heirs forever, free from the claim & claims of the said Clifton R. Slaton & his heirs and all other persons forever.

In testimony whereof I, the said Clifton R. Slaton, have hereunto set my hand and affixed my seal the day and year above written.

CLIFTON R. SLATON. [SEAL.]
LUCY R. SLATON. [SEAL.]

HENDERSON COUNTY, *ss:*

This deed of bargain & sale & receipt was produced to me in my office on the 15th day of May, 1827, and acknowledged by the grantors to be their act and deed. She, the said Lucy, being examined properly and apart from her husband, states that she freely
998 and voluntarily relinquished her right and title to dower to the land by this deed conveyed without the threats or persuasions of her husband and consented it might be recorded, which is done.

WILL. D. ALLISON, *C. H. C. C.*

May 15th, 1827.

Received of Geo. Bohall the balance consideration of the above-conveyed land, being $250, a receipt having been given for the balance.

C. R. SLATON.

Y. E. ALLISON.

No. 4.

This indenture, made and entered into this 25th day of September, in the year of our Lord one thousand eight hundred and twenty-eight, between George Bohall, of Vanderburgh county, State of Indiana, of the one part, — James McClain, of Henderson county, Commonwealth of Kentucky, of the other part, witnesseth: That the said

George Bohall, for and in consideration of the sum of two hundred dollars to him in hand paid by the said James McClain at and before the sealing and delivery of these presents, the receipt of which he do- hereby acknowledge, have granted, bargained, and sold, and do- by these presents grant, bargain, sell, and convey and confirm, unto the said James McClain and his heirs forever a certain tract or parcel of land lying and being in the
999 county of Henderson and Commonwealth of Kentucky, on the Green River Island, containing by estimation one hundred acres, be the same more or less, and bounded as follows, viz: Beginning on two honey locusts and one maple tree in the mouth of a drain on the north side of said island; thence running down with the meanders of the bayou north 72 west 64 poles to two hickories; thence running south 18 west 250 poles to two pecans and cotton-wood trees on the bank of the Ohio river; thence running up with the meanders of the river south 72 east 64 poles to 4 cotton-wood trees; thence north 18° east 250 poles to the beginning, unto the said James McClain, his heirs and assigns; to have and to hold the said tract or parcel of land, with all and singular the premises and appurtenances thereunto belonging or in anywise appertaining, unto the said James McClain, his heirs and assigns, forever; and the said George Bohall do- covenant and agree to and with the said James McClain, against the claim of himself, his heirs and assigns, and all persons claiming by, through, from, or under him, and also against the claim or claims of all and every other person or persons whatsoever to the said tract or parcel of land hereby conveyed, to warrant — forever defend the right and title thereof to the said James McClain, his heirs and assigns, by
1000 these presents. In testimony whereof the said George Bohall have hereto set his hand and affixed his seal the day and year above written.

his
GEORGE x BOHALL. [SEAL.]
mark.

STATE OF KENTUCKY, } ss:
Henderson County, }

I, Will. D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from George Bohall to James McClain was produced to me in my office on the 27th day of September, 1828, and acknowledged by the said George Bohall to be his act and deed, and the same, with this certificate, was thereupon truly recorded in my office the date above written.

WILL. D. ALLISON.

No. 5.

This indenture, made this first day of March, in the year of our Lord 1830, between John Slaton, of the county of Henderson and State of Kentucky, of the one part, and Burny Hancock, of the same county and State, of the other part, witnesseth: That the said John Slaton, for and in consideration of fifty dollars in hand paid the

said Burny Hancock, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and confirmed, and by these
1001 presents do hereby sell and confirm, unto the said Burney Hancock a certain tract or parcel of land lying in the Green River Island, in Henderson county, to wit: Beginning at a cotton-wood standing on the south bank of said island, running N. 26 west 7 poles to a cotton-wood; thence N. 40 west 40 poles to a pawpaw; thence N. 60 W. 26 poles to a box elder; thence N. 70 W. 100 poles to hackberry; thence N. 87 W. 430 poles to a box elder; thence S. 10 E. 160 poles to two cotton-woods on the bank of the river; thence up the river with the meanders thereof to the beginning, containing four hundred acres, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Burney Hancock and his heirs forever, free from the claim and claims of the said John Slaton — his heirs forever.

Testimony whereof I, the said John Slaton, have hereunto set my hand and affixed my seal the first day of March, 1830.

JOHN SLADYEN. [SEAL.]

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from John Sladyen to Burney Hancock was produced to me, in my office, by the grantor, and acknowledged by the said John Sladyen to be his act and deed;
1002 and thereupon the same, together with the certificate, was truly recorded in my office the 1st day of March, 1830.

WILL. D. ALLISON.

No. 6.

This indenture, made and entered into this 31st day of January, in the year of our Lord 1831, between Nancy Terry, widow and relict of Robert Terry, deceased, and Ann I. Terry and John P. Holloway and Sarah Holloway, his wife, late Sarah Terry, which said Sarah and Ann are children, heirs of said Robert Terry, deceased, of the one part, and Eggleston Matthews, of the other part, witnesseth: That the said Nancy Terry, Ann I. Terry, John P. Holloway, and Sarah, his wife, for and in consideration of the sum of three hundred dollars to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do give, grant, bargain, sell, alien, convey, and confirm, unto the said Eggleston Matthews and his heirs and assigns forever a certain tract or parcel of land containing three hundred and forty acres by survey bearing date 23rd day of October, 1823, lying and being in the county of Henderson, State of Kentucky, on the first large island in the Ohio river below the mouth of Green river, and bounded as followeth, to wit: Beginning at four hickories on the bayou on the north side of the island, corner
1003 to Slaughter's military survey, and running down the bayou with its several meanders N. 60° west 54 poles, thence N. 54

W. 166 poles, thence N. 46 W. 56 poles to two elms and a box elder on the bank of the bayou, thence S. 1° east 252 poles to a stake on the bank of the Ohio river, thence S. 52 E. 100 poles, thence S. 67° E. 44 poles to three cotton-wood trees and a mulberry tree, corner to Slaughter's military survey; thence N. 21° east 270 poles to the beginning, which said tract of land was granted by the Commonwealth of Kentucky to the said Robert Terry, now deceased, as will appear by patent bearing date the 24th day of June, 1824, and which said tract of land, amongst other things, was by the will of said Robert Terry devised to the said Nancy Terry, his widow, during her life, and then to be equally divided between his three youngest children, the aforesaid Ann & Sarah and Nathaniel D. Terry; to have and to hold the said tract of land above described and hereby conveyed, with all and singular.— privileges and appurteances thereunto belonging or in anywise appertaining, unto him, the said Eggleston Matthews, his heirs & assigns, to his and their only proper use and behoof forever; and the said Nancy Terry, Ann I. Terry, John P. Holloway, and Sarah Holloway, his wife, do hereby covenant, promise, and agree to and with the said
1004 Eggleston Matthews that they will forever warrant and defend the title of said tract or parcel of land unto him, the said Eggleston Matthews, his heirs and assigns, against the claim or claims of themselves & their heirs and all persons claiming under them or any of them, and also against the claim or claims of all persons claiming under the said Robert Terry, deceased, but it is expressly understood that they are not to defend against the claim of any other person.

In testimony whereof the said Nancy Terry, Ann I. Terry, John P. Holloway, and Sarah, his wife, have hereunto set their hands and affixed their seals the day and year first above written.

NANCY TERRY. [SEAL.]
ANN I. TERRY. [SEAL.]
JOHN P. HOLLOWAY. [SEAL.]
SARAH HOLLOWAY. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Nancy Terry, widow of Robert Terry, deceased, Ann I. Terry, & John P. Holloway and Sarah Holloway, his wife, to Eggleston Matthews was pro-
1005 duced to me by the grantor and acknowledged by Nancy Terry, Ann I. Terry, and John P. Holloway to be the- act and deed; and the said Sarah Holloway, being examined by me privily and apart from her husband, declared that she did, freely and willingly, sign, seal, and deliver the said writing and wishes not to retract it, and acknowledged the said writing, again shown and explained to her, to be her act and deed, and consenteth that the same may be recorded; whereupon the same, together with their certificate, was truly recorded in my office the 31st day of January, 1831.

WILL. D ALLISON.

No. 7.

This indenture, made and entered into this 23rd day of April, 1831, between Eggleston Matthews, of one part, and Lewis Hurley and Austin Phillips, of the other part, all of the county of Henderson and State of Kentucky, witnesseth: That the said Eggleston Mathews, for and in consideration of the sum of one hundred and fifty dollars to him in hand paid, the receipt of which is hereby acknowledged, hath granted, bargained, & sold, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said Lewis Hurley and Austin Phillips, their heirs and assigns, forever the following tract or parcel of land, lying and being in the county
1006 and State aforesaid, on the first large island in the Ohio river below the mouth of Green river, containing one hundred acres, and being a part of the tract of land conveyed to said Matthews by Nancy Terry & others by deed recorded in the clerk's office by [of] the Henderson county court, bearing date the 31st day of January, 1831, which said one hundred acres of land is bounded as follows, to wit: Beginning at a small box elder and two elms on the bank of the bayou, on the north side of the island, and running south 50 east up and with the bayou 141 poles to a walnut, hickory, & hackberry on the bank of the bayou; thence south 40° west 114 poles to two box elders; thence north 50° west 141 poles to two box elders & a cotton-wood; thence north 40° east 114 poles to the beginning; to have and to hold the said tract of land hereby conveyed, with all and singular the appurtenances thereunto belonging or in anywise appertaining, unto the said Lewis Hurley and Austin Phillips, their heirs and assigns, forever; and the said Eggleston Mathews hereby covenants and agrees that he will forever warrant and defend the title of the aforesaid one hundred acres of land unto them, the said Lewis Hurley and Austin Phillips, their heirs and assigns, against the claims of him, the said Matthews, & his
1007 heirs, and against the claim of all persons claiming by, through, or under him; but the said Matthews, only intending to give a quitclaim right, will not warrant nor defend against the claim of any person other than those claiming under him.

In testimony whereof the said Eggleston Matthews hath hereunto set his hand and affixed his seal the day above written.

E. MATTHEWS. [SEAL.]
E. M. MATTHEWS. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the court for the county aforesaid, do certify that this deed from Eggleston Matthews to Lewis Hurley and Austin Phillips was produced to me in my office by the grantor and acknowledged by the said Eggleston Matthews to be his act — deed; and thereupon the same, together with this certificate, was truly recorded in my office the 23rd day of April, 1831.

WILL. D. ALLISON.

No. 8.

This indenture, made this 26th day of September, in the year of our Lord one thousand eight hundred and thirty-one, between Nancy Terry, widow and relict, and Ann I. Terry, one of the children, devisees of Major Robert Terry, deceased, of the county of Henderson and State of Kentucky, of the first part, and Eggleston
1008 Matthews, of the same county and State, of the other part.

Whereas Robert Terry, — his lifetime, became entitled, by virtue of a Kentucky land office warrant No. 14994, to eighty-one acres of land lying in Henderson county on the first large island in the Ohio river below the mouth of Green river, which the said Robert Terry, by his last will and testament, bequeathed to his three youngest children, Ann I. Terry, Sarah R. Terry, afterward Holloway and since deceased, and Nathaniel D. Terry: Now, this indenture witnesseth that the said Nancy Terry, Ann I. Terry, in consideration of the sum of eighty-one dollars, lawful money of the United States, to them by the said Eggleston Matthews in hand paid, the receipt whereof is hereby acknowledged, have bargained, sold, aliened, and released unto the said Eggleston Matthews, his heirs & assigns, forever the above-mentioned eighty-one acres of land, bounded as follows: Beginning at a small pecan on the river side of the island, corner to Slaydon, and running north 76° W. fifty poles to two cottonwoods, corner to Terry, thence with Terry's line N. 18° E. two hundred and seventy-six poles to two hickories, corner to Terry's, on the bayou; thence up the bayou S. 60 E. forty-eight poles to three hickories, corner to Slaydon; thence with Slaydon's line S. 17 W. two
1009 hundred and sixty-two poles to the beginning; to have and to hold the said eighty-one acres of land, with its appurtenances, together with all and singular the rights, privileges, and emoluments whatsoever to the same in anywise appertaining or belonging, to the only proper use and behoof of the — Eggleston Matthews, his heirs and assigns, forever; and the said Nancy Terry and Ann I. Terry do hereby covenant, promise, and agree to and with the said Eggleston Matthews that they will forever warrant and defend the title of said tract or parcel of land unto him, the said Eggleston Matthews, his heirs and assigns, against the claim or claims of themselves and their heirs and all persons claiming under them or either of them, and also against the claim or claims of all persons claiming under the said Robert Terry, deceased, but it is expressly understood that they are not to defend against the claim of any other person.

In testimony whereof the said Nancy Terry and Ann I. Terry have hereunto set their names and affixed their seals the day and year above mentioned.

NANCY TERRY. [SEAL.]
ANN I. TERRY. [SEAL.]

STATE OF KENTUCKY, } ss:
Henderson County, }

1010 I, William D. Allison, clerk of the county court of the county aforesaid, do certify that this deed from Nancy Terry and Ann I. Terry to Eggleston Matthews was produced to me and acknowledged by said Nancy Terry and Ann I. Terry to be their act and deed, and thereupon the same, together with this certificate, was truly recorded in my office the 24th day of December, 1831.

WILL. D. ALLISON.

No. 9.

This indenture, made and entered into this the 24th day of December, 1831, between Eggleston Matthews and Elizabeth, his wife, of the one part, and James McClain, of the other part, all of the county of Henderson and State of Kentucky, witness-: That the said Eggleston Matthews and Elizabeth, his wife, for and in consideration of the sum of eighty-one dollars to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said James McClain, his heirs and assigns, forever a certain tract or parcel of land lying and being in the county and State aforesaid, on the first large island in the Ohio river below the mouth of Green river, and bounded as follows, to wit: Beginning at
1011 a small pecan on the river side of island, corner to Stadgen, and running north 76° west fifty poles to two cotton-woods, corner to Terry, thence with Terry's line north 18° east 276 poles to two hickories, corner to Terry, on the bayou; thence up the bayou south 60° east forty-eight poles to three hickories, corner to Leadyen; thence with Leadyen's line south 17° west 262 poles to the beginning, containing eighty-one acres, and which is the same tract of land conveyed to the said Eggleston Matthews by Nancy Terry and Ann I. Terry by deed bearing date the 26th day of Sept., 1831; to have and to hold the said land, with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining, unto him, the said James McClain, and his heirs and assigns, to his and their only proper use and behoofs forever; and the said Eggleston Matthews and Elizabeth, his wife, do agree to warrant the title of said land unto the said James McClain, his heirs and assigns, against the claim of themselves and all persons claiming under them, but it is expressly understood that they will warrant against the claim of no other person, and they only intend to give a quitclaim to said land.

In testimony whereof the said Eggleston Matthews and Elizabeth, his wife, have hereunto set their hands and affixed their seals the date first above written.

E. MATTHEWS. [SEAL.]
—— ——. [SEAL.]

1012 STATE OF KENTUCKY, }
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Eggleston Matthews and Elizabeth, his wife, to James McClain was this day presented to me, in my office, and acknowledged by the said Eggleston Matthews to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office the 27th of February, 1832.

WILL. D. ALLISON, *Clk.*

No. 10.

This indenture, made this 3rd day of June, 1834, between Burney Hancock, of the county of Henderson and Commonwealth of Kentucky, of the one part, and James McClain, of the same county and State aforesaid, of the other part, witnesseth: That the said Burney Hancock, for and in consideration of fifty dollars in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said James McClain, his heirs and assigns, all that tract or parcel of land, situate and being in the county of Henderson, on the Green River Island, and bounded as follows, to wit: Beginning at
1013 James McClain's upper corner of a two-hundred-acre tract surveyed and patented to John Slaton, thence running up said island, with the meanders of the Ohio river, 70 poles to walnut; thence north 18° east 160 poles to the back line of John Slaton's 400-acre survey, patented to the said Slaton, to a stake; thence with said line down the island 70 poles to the upper line of the said McClain's 200-acre survey to a stake; thence running with said line 160 poles to the beginning, containing seventy acres, be the same more or less, together with all and singular the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said James McClain, his heirs and assigns, forever; and the said Burney Hancock, for himself, his heirs, executors, and administrators, — the aforesaid tract of land unto the said James McClain, his heirs or assigns, against the claim or claims of all and every person or persons claiming by, through, or under him, the said Hancock, but from no other person.

In witness whereof *hear* I set my hand and seal this 3rd day of June, 1834.

BURNEY HANCOCK. [SEAL.]

STATE OF KENTUCKY, }
Henderson County, } *sct:*

1014 I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Burney Hancock to James McCalin was this day acknowledged before me in my office by the said Burney Hancock to be his act and deed (the word "seventy" being first interlined), and the same, together with this

certificate, was this day truly recorded in my office the 17th day of June, 1834.

WILL. D. ALLISON.

No. 11.

This indenture, of two parts, made and entered into between Laura McAlister, daughter of Aneas McAlister, deceased, of the one part, and Henderson J., Aneas, and Rinaldo A. Barnett, sons of Samuel O. Barnett, dec'd, of the other part, all of the county of Henderson, State of Kentucky. Whereas the said Aneas McAllister and Samuel O. Barnett died seized equally in their demesne as of fee of all that tract of land on the head of Green River Island, in the county and State aforesaid, situated and bounded as described in their patent, bearing date the fourth day of June, 1819, containing one hundred and twenty acres, more or less, whereby the said tract of land has descended and come unto the said Lawren McAlister, of the one part, heir of Aneas McAlister, deceased, and Henderson J., Aneas, and Renaldo A. Barnett, of the other part, heirs of Samuel O. Barnett, deceased, now, this indenture witnesseth: That the said Lawren McAlister and the said Henderson J. Barnett, for himself and as guardian of Aneas and Rinaldo A. Barnett, have made petition of
1015 the aforesaid tract of land among them in two parts in manner and form following, to wit: That the said Lawren McAlister, her heirs & assigns, shall have and hold and enjoy forever all the upper part of the tract aforesaid from a corner made on a sycamore on the bank of the Ohio river below Ira Beache's house one hundred and forty poles from the upper corner on the Ohio bank, thence N. 6° E. to the north side of the island, containing sixty acres, more or less, with twenty-five dollars paid by the parties of the second —, for her full part and share of her, the said Lawren McAlister, of the tract of land above mentioned & so descended as aforesaid: and that the said Henderson J., Aneas, and Rinaldo A. Barnett, their heirs — assigns, shall have, hold, and enjoy forever all the lower part of the tract described above from a corner made on the sycamore above mentioned eighty poles from the lower corner of said tract on the bank of the Ohio river, thence out from the sycamore north 6° E. to the north side of the island, containing sixty acres, more or less, for their full share and part of tract above described and so descended to them as aforesaid. Now the said Henderson J., Aneas, and Rinaldo A. Barnett doth grant and release unto the said Lawren McCallister the said upper part of tract
1016 of land agreed to be held as aforesaid, and twenty-five dollars, the receipt whereof is hereby acknowledged, for her full part in land so descended as aforesaid; to have and to hold the upper part of said tract of land, with the appurtenances, hereby released and confirmed unto the said Lawren McAlister, her heirs and assigns, in severalty forever; and the said Lawren McAlister doth grant and release unto the — Henderson J., Aneas, and Rinaldo A. Barnett all the lower part of the said tract of land agreed to be held as aforesaid for their full part and share of tract of land so descended as aforesaid; to have and to hold the lower part of said

tract, with the appurtenances, hereby released and confirmed unto the said Henderson J., Aneas, and Rinaldo A. Barnett, their heirs and assigns, in severalty forever; and it is further covenanted and agreed by both the parties to this indenture subscribed that the division line from the sycamore to the north side of the island shall extend across on a straight line through warrant survey to the Indiana bank; and it is further agreed between the parties to this indenture annexed that when the patent for the warrant located on the bayou round the head of the island comes on that this line shall be a full division of the warrant survey, and that Lawren McCallister is to have the upper half down to the division line,
1017 and that Henderson J., Aneas, and Rinaldo A. Barnett shall have the lower half from the division line down the bayou.

Given under our hands and seals this the 9th of December, 1833.

LAWREN McCALLISTER, [SEAL.]
By her agent, JOHN E. McCALLISTER.
HENDERSON J. BARNETT,
For himself and for ANEAS & RINALDO A. BARNETT.

No. 12.

This indenture, made and entered into this 26th day of September, in the year 1838, between Henderson J. Barnett & Sarah, his wife, Rinaldo A. Barnett, both of the county of Henderson & State of Ky., of the one part, & Abraham Franceway, of the county of Spencer & State of Indiana, of the other part, witnesseth: That the said Henderson J. Barnett & Sarah, his wife, & Rinaldo A. Barnett, for and in consideration of three hundred dollars in hand paid, the receipt of which is hereby acknowledged, hath granted, bargained, & sold, & by these presents doth grant, bargain, & sell, unto the said Abraham Franceway, his heirs and assigns, all that tract or parcel of land situate & being in the county of Henderson & State of Kentucky, on Green River Island, and bounded as follows, to wit: Beginning at a black walnut & sycamore tree on the bank of the Main river, running N. 60° E. 144 — to a stake on the north side of the island chute; thence S. 75° E. 54⅔ poles to a stake; thence
1018 6° W. 146 — to a sugar tree & stake on the bank of the Main river; thence down the river N. 86° W. 54⅔ poles to the beginning, containing forty-eight acres, to [be] the same more or less, together with all and singular *together with all and singular* the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said Abraham Franceway, his heirs and assigns forever; & the said Henderson J. Barnett & Sarah, his wife, & Rinaldo A. Barnett, for themselves, their heirs, executors, administrators, or assigns, against the claim or claims of all persons claiming by, through, or under them, doth and will forever warrant and defend by these presents.

In witness whereof the said Henderson J. Barnett & Sarah, his wife, who hereby relinquished her right of dower in & to the lands

conveyed in this deed, & Rinaldo A. Barnett hath hereunto set their hands & seal the day & date first above written.

RINALDO A. BARNETT. [SEAL.]
HENDERSON J. BARNETT. [SEAL.]

The words "of the one part" was interlined before signing.

1019 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Henderson J. Barnett & Sarah, his wife, & Rinaldo A. Barnett to Abraham Franceway was, on the 13th day of October, 1838, acknowledged before me by the said Henderson J. Barnett to be his act and deed, and again on the 29th day of October, 1838, was acknowledged before me by the said Rinaldo A. Barnett to be his act and deed; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 29th day of October, 1838.

WILL. D. ALLISON.

No. 13.

This indenture, made this third day of October, one thousand eight hundred thirty-eight, between Jesse Lane and John Parker, of the first part, and Jackson McLain, of the county of Henderson & State of Kentucky, of the second part, witnesseth: That the party of the first part, in consideration of the sum of one thousand dollars, to them duly paid, hath sold & by these presents doth grant and convey to the said party of the second part, his heirs and
1020 assigns, all that tract or parcel of land situated in the county of Henderson and State of Kentucky and bounded as follows: Beginning at a sycamore on the south side of Green River Island, running thence south seventy-eight degrees west 74 poles to a black walnut on the banks, James McLain's upper corner; thence with his line N. 18° E. 160 poles to a stake; thence with his line south 78° west 70 poles to a stake; thence N. 18° east 130 poles to a stake in the State line of the State of Indiana, on the Ohio river, on the north side of said island; thence with said State line S. 66 E. 100 poles to a stake in said State line; thence — a direct line to the beginning, containing, by estimation, one hundred acres, be the same more or less, with the appurtenances and all the estate, title, and interest therein of the said party of the first part; and the said Lane and Parker do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the premises above conveyed, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, they will forever warrant and defend against every person whomsoever lawfully claiming the same premises by, through, or under the said parties of the first part, but with no further or other warranty whatever.

1021 In witness whereof the party of the first part have hereunto set their hands and seals the day and year first above written.

JESSE LANE. [SEAL.]
his
JOHN x PARKER. [SEAL.]
mark.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Jesse Lane and John Parker to Jackson McClain was this day acknowledged before me in my office by the said Jesse Lane and John Parker to be their act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 30 day of October, 1838.

WILL. D. ALLISON.

No. 14.

This indenture, made this third day of October, one thousand eight hundred and thirty-eight, between Jesse Lane & John Parker, of the county of Henderson & State of Kentucky, of the first part, and Austin Philips, of the same county and State, of the second part, witnesseth: That the party of the first part, in consideration of the sum of three hundred dollars to them duly paid, hath
1022 sold and by these presents doth grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land, situated in the county of Henderson and State of Kentucky, on the Green River Island, beginning at a sycamore, the corner of a tract this day sold and conveyed by the same parties to Jackson McClain, on the south side of said island, running thence up the river, according to its meanders, sixty-five poles to a stake, when reduced to a straight line; thence north 18° east to a stake in the southern boundary of the State of Indiana on the Ohio river; thence with said boundary line down the river to a stake, another corner of a tract this day sold and conveyed to Jackson McClain by the same parties; thence in a straight line to the beginning, containing by estimation eighty acres, be the same more or less, with the appurtenances and all the estate, title, and interest therein of the said party of the first part; and the said parties of the first part do hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the premises above conveyed in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, they will forever warrant and defend against every person whomsoever lawfully claiming the said
1023 land by, through, or under the said Lane & Parker, the parties of the first part, but with no other or further warranty.

In witness whereof the party of the first part have hereunto set their hands and seals the day and year first above written.

JESSE LANE. [SEAL.]

his
JOHN x PARKER. [SEAL.]
mark.

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Jesse Lane and John Parker to Austin Philip was this day acknowledged before me in my office by the said Jesse Lane and John Parker to be their act and deed; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 30 day of October, 1838.

WILL. D. ALLISON.

No. 15.

This indenture, made this third day of October, one thousand eight hundred and thirty-eight, between Jesse Lane, of the county of Henderson and State of Kentucky, of the first part, and John Garrett, of the county & State aforesaid, of the second part,
1024 witnesseth:

That the party of the first part, in consideration of the sum of two hundred dollars to him duly paid, hath sold and by these presents doth grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land, situated in the county and State aforesaid, on the north side of Green River Island, and bounded as follows: Beginning at a stake in the southern line of the State of Indiana, on the Ohio river, corner to a tract of land this day sold and conveyed by Jesse Lane & John Parker to Austin Phillips, thence with said State line up the river to a sycamore, corner to said Jesse Lane's survey, granted by the Commonwealth of Kentucky; thence with the upper line of the said Jesse Lane's said survey to a hackberry, corner to the said survey and in the line between Slaton's & McAllister's survey; thence down the line of said Slaton's survey to a stake in the line of the aforesaid land conveyed to Austin Phillips; thence in a direct line to the beginning, containing by extenuation [estimation] forty acres, more or less, with the appurtenances and all the estate, title, and interest therein of the said party of the first part; and the said Jesse Lane doth hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that the premises above conveyed in the quiet and peaceable possession of the said party of the
1025 second part, his heirs and assigns, he will forever warrant and defend against every person whomsoever lawfully claiming the said tract of land by, through, or under him, the said Jesse Lane, than [but] with no other or further warranty whatever.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

JESSE LANE. [SEAL.]

STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court for county aforesaid, do certify that this deed from Jesse Lane to John Garrett was this day acknowledged before me in my office by the said Jesse Lane to be his act and deed; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 3rd day of October, 1838.

WILL. D. ALLISON.

No. 16.

This indenture, made and entered into this sixth day of September, in the year 1841, between Burney Hancock and John Garrett, of the county of Henderson and State of Kentucky, witnesseth:

That for and in consideration of the sum of two hundred
1026 dollars by the said Garrett to the said Hancock in hand paid, the receipt whereof is hereby acknowledged, he, the said Hancock, has this day granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, alien, convey, and confirm, unto the said Garrett, his heirs and assigns, forever all that tract or parcel of land situate, lying, and being in the county and State aforesaid on Green River Island, and bounded as follows, to wit: Beginning at a black walnut stump near the Ohio river, thence N. 60° E. 88.75 poles to a stake in Hancock's back line; thence with said line N. 80° W. 125 poles to a stake in Philips' line; thence with said line S. 6° W. 107 poles to Philip's corner on the bank of the Ohio river; thence up the river N. 84° E. 49 poles S. 85° E. 78.25 poles to the beginning, containing sixty-nine and three-quarter acres, more or less; to have and to hold the above-described land and every part or parcel thereof to him, the said Garrett, his heirs and assigns, forever, together with all and singular the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, free and clear from the claim or claims, disturbance, or disturbances, of him, the said Hancock, his heirs, and all and every person or persons claiming by, through, or under him
1027 or them, but with no other or further warranty whatever.

In testimony whereof I have hereunto set my hand and affixed my seal this day and date first above written.

B. HANCOCK. [SEAL.]

STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Burney Hancock to John Garrett was this day acknowledged before me, in my office, by the said Burney Hancock to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 6th day of September, 1841.

WILL. D. ALLISON.

No. 17.

This indenture, made this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and forty-one, between Levi Jones, of the Republic of Texas, of the one part, and John Garrett, of Henderson county, Kentucky, of the other part, witnesseth:

That the said Levi Jones, for and in consideration of the sum of one thousand dollars, good and lawful money of the United States, to him in hand paid by the said John Garrett, the receipt
1028 whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said John Garrett and to his heirs and assigns forever one hundred acres of land situate on Green River Island, in said county of Henderson and State of Kentucky, it being the same now in possession and occupancy of said John Garrett and bounded as follows, to wit: Beginning on the bank of the Ohio at center or middle of the lane dividing the possession of said John Garrett and Abram Franceway, running thence along the middle of the said lane to the bank of the bayou; thence down the bank or margin of the bayou to a point from whence a line drawn parallel with said land to the Ohio river and up said river to the beginning will include said hundred acres, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the above bargained and described premises, with the appurtenances, unto the said John Garrett, his heirs and assigns, forever; and the said Levi Jones and Thomas Towles, Junior, for themselves, their heirs, executors, and administrators, do covenant and agree to and with the said John Garrett, his heirs and assigns, to forever warrant and defend the above bargained and de-
1029 scribed premises, with the appurtenances, to the said John Garrett, his heirs and assigns, against themselves, each and both of them, and against John Slaughter, Smith Slaughter, Zephaniah Noe, and Mary Noe, his wife, and all other persons whomsoever claiming the said premises or any part thereof, by, from, through, or under the said Levi Jones, John Slaughter, Smith Slaughter, Zephaniah Noe and Mary Noe, his wife, or any or either of them, shall and will forever warrant and defend.

In witness whereof the said Levi Jones and Thomas Towles, Junior, have hereunto set their hands and seals the date above written.

LEVI JONES. [SEAL.]
THOMAS TOWLES, JR. [SEAL.]

Witness:

his
JOHN M. x STINSON.
mark.
CORYDON GARRETT.
JOHN McGARRETT.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones to John Garrett was this day acknowledged before me, in my office, by the said Levi Jones and Thomas Towles, Jr., to be their act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 27th day of October, 1841.

WILL. D. ALLISON.

1030 No. 18.

This indenture, made this 25th day of October, 1841, between Levi Jones, of the first part, and Abraham Franceway, of the second part, witnesseth: That for and in consideration of the sum of one hundred and fifty dollars to the said Levi Jones in hand paid (the receipt of which is hereby acknowledged), the said Levi Jones hath bargained & sold, and by these presents doth grant and convey, unto the said Abraham Franceway, his heirs and assigns, all that tract or parcel of land, lying in the county of Henderson and State of Kentucky, on Green River Island, and part of six-hundred acre survey patented by the Commonwealth of Virginia to John Slaughter by patent bearing date February, 1790, and the same on which the said Franceway now resides, bounded by a line commencing on the Ohio river, at the lane between said Franceway and John Garrett, and running along the center of said lane to the bank of the bayou next the Indiana shore; thence up said bayou so far as will by a line parallel to said lane include the quantity of forty acres; to have and to hold the said above-described tract or parcel of land to the said Abraham Franceway, his heirs and assigns, forever, together with all and singular the appurtenances thereunto belonging,
1031 free and clear from the claim of said Levi Jones and all persons claiming by, through, or under him, and free and clear from the claim or claims of each and every person whomsoever.

In testimony of all which the said Levi Jones hath hereunto set his hand and seal this day and date above written.

LEVI JONES. [SEAL.]

Witness:
J. M. GARRETT.
THOMAS TOWLES, JR.
CORRYDON GARRETT.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones to Abraham Franceway was this day acknowledged before me in my office by

the said Levi Jones to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 27th day of October, 1841.

WILL. D. ALLISON.

No. 19.

This indenture, made this twenty-ninth day of October, in the year of our Lord 1841, between Levi Jones, of the Republic of Texas, Thomas Towles, Sr., of the county of Henderson and State of Kentucky, of the one part, and Jackson McClain, of Henderson county, Kentucky, of the other part, witnesseth: That
1032 the said Levi Jones and Thomas Towles, Sr., for and in consideration of the sum of fifteen hundred dollars to him in hand paid by the said McClain, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said McClain, his heirs and assigns, one hundred and forty acres of land situate upon Green River Island, in said county of Henderson, and bounded as follows: Beginning at the lower corner of a tract of sixty acres conveyed by said Jones to Austin Philips by deed bearing the same date herewith, on the bank of the Ohio river, running from thence along said Austin Philips' lower line to the bayou or north side of the island at said Philips' corner; thence down along the bank of said bayou to a point from whence a line drawn parallel with said Philips' lower line to the Ohio river and from thence to the place of beginning will include said one hundred and fifty acres, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said one hundred and fifty acres of land above described, with the appurtenances, unto the said McClain, his heirs and assigns, forever; and the said Levi Jones and
1033 Thomas Towles, Sr., for themselves, their heirs, executors, and administrators, do covenant and agree to warrant and defend the above bargained and described premises to the said McClain, his heirs and assigns, against the claim of John Slaughter, Smith Slaughter, Zephaniah Noe, and Mary Noe, his wife, and against the claim or claims of all and every other person or persons whomsoever claiming or to claim said premises or any part thereof, by, from, through, or under the said several persons above named, or either of them.

In witness whereof the said Levi Jones and Thomas Towles have hereunto set their hands and seals the date above written.

LEVI JONES. [SEAL.]

In presence of—
THOMAS TOWLES, JR.
L. W. POWELL.

STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that the deed from Levi Jones and Thomas Towles, Sr., to Jackson McClain was this day proved before me, in my office, by the oaths of Thomas Towles, Jr., and L. W. Powell, subscribing witnesses thereto, to be the act and deed of the said Jones and Towles; and thereupon the same, together
1034 with this certificate, was truly recorded in my office.

Witness my hand this 29th day of October, 1841.

WILL. D. ALLISON.

No. 20.

This indenture, made this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty-one, between Levi Jones, of the Republic of Texas, of the one part, and Austin Philips, of Henderson county, Kentucky, of the other part, witnesseth: That the said Levi Jones, for and in consideration of the sum of four hundred and eighty dollars to him in hand paid by the said Philips, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm, unto the said Philips, his heirs and assigns, sixty acres of land situate upon Green River Island, in said county of Henderson, and bounded as follows: Beginning at the lower corner of a tract of one hundred acres conveyed by said Jones to John Garrett by deed bearing date the twenty-sixth day of October instant, on the bank of the Ohio river, running from thence along said John Garrett's lower line to bayou at said Garrett's corner; thence down along the bank of said bayou to a point from whence by a line drawn parallel with
1035 said John Garrett's lower line to the Ohio river and from thence to the place of beginning will include said sixty acres, together with all and singular the hereditaments and appurtenances thereunto belonging or anywise appertaining; to have and to hold the said sixty acres above described, with the appurtenances, unto the said Philips, his heirs and assigns, forever; and the said Levi Jones and Thomas Towles, Jr., for themselves, heirs, executors, and administrators, do covenant and agree to warrant and defend the above bargained and described premises to the said Philips, his heirs and assigns, against the claim of the said Levi Jones and against the claim of John Slaughter, Smith Slaughter, Zephaniah Noe, and Mary Noe, wife of said Zephaniah, and against the claim or claims of all and every other person or persons whomsoever claiming or to claim said premises or any part thereof by, from, through, or under the said several persons above named, or either of them.

In witness whereof the said Levi Jones and Towles have hereunto set their hands and seals the date above written.

LEVI JONES. [SEAL.]
THOMAS TOWLES, JR. [SEAL.]

1036 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones and Thomas Towles, Jr., to Austin Philips was this day acknowledged before me in my office by the said Jones and Towles to be their act and deed; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 29th day of October, 1841.

WILL. D. ALLISON.

No. 21.

This indenture, made this twenty-ninth day of October, in the year of our Lord eighteen hundred and forty-one, between Levi Jones, of the Republic of Texas, of the one part, and Eneas M. Barnett, of Henderson county, Kentucky, of the other part, witnesseth: That the said Levi Jones, for and in consideration of the sum of seven hundred dollars to him in hand paid by the said Barnett, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and assign, ninety acres of land situate upon Green River Island, in said county of Henderson, it being the extreme eastern or upper portion thereof, and
1037 bounded below by the land now owned and occupied by Abram Franceway, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said ninety acres of land above described, with the appurtenances thereunto belonging, unto the said Barnett, his heirs, and assigns, forever and the said Levi Jones, for himself, his heirs and assigns, forever, and the said Levi Jones, for himself, his heirs, executors, and administrators, does covenant and agree to warrant and defend the above bargained and described premises to the said Barnett, his heirs and assigns, against the claim of the said Jones and against the claim of John Slaughter, Smith Slaughter, Zephaniah Noe, and Mary Noe, his wife, and against the claim or claims of all and every other person or persons whomsoever claiming or to claim said premises or any part thereof, by, from, through, or under the several persons above named, or either of them.

In witness whereof the said Levi Jones has hereunto set his hand and seal the date above written.

LEVI JONES. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

1038 I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones to Æneas M. Barnett was this day acknowledged before me in my

office by the said Levi Jones to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 29th day of October, 1841.

WILL. D. ALLISON.

No. 22.

Whereas a writ of *habere facias possessionem*, directed to the marshal of the district of Kentucky, issued from the office of the clerk of the United States circuit court for said district on the 20th day of September, 1841, in favor of John Doe, on the demise of Smith Slaughter, Zephaniah Noe and Mary, his wife, late Mary Slaughter, and against John Garrett, Anna Elsworth, and Catherine Olds, survivors of John Bohall, deceased, and which now is dated the day and year aforesaid, and is returnable to November rules, 1841, and is endorsed by the clerk No. 8015, and farther endorsed by the Hon. John J. Crittenden, as attorney for the plaintiffs before, as follows: "On the execution of this writ the marshal is requested to deliver possession to Levi Jones or his authorized agent. October
1039 15, 1841. (Signed) J. J. Crittenden, for pl'ffs in execution"—by virtue of which endorsement the said Jones became authorized & empowered to control and direct the execution of said process and the judgment on which it issued: Now, be it known that the said Levi Jones, in his own right and as the agent and attorney of the said plaintiffs, doth hereby release unto Jackson McClain and John H. Standley, executors of James McClain, deceased (whom he deems to be in possession of a part of said premises embraced in said judgment), all manner of benefit arising from the said judgment & recovery, and all manner of costs & mesne profits, claims, or charges which have accrued or may accrue from the use and occupation of the said land or the judgments & recovery aforesaid. This release is made for a valuable consideration to the said Jones, in his own right and as agent as aforesaid, in hand paid, the receipt of which is hereby acknowledged.

Witness his hand & seal this 30th Oct., 1841.

LEVI JONES. [SEAL.]

Witness:
THOMAS TOWLES, JR.
S. W. POWELL.

STATE OF KENTUCKY, } *sct:*
Henderson County. }

1040 I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this release from Levi Jones to Jackson McClain and John H. Stanley, executors of James McClain, deceased, was this day produced to me, in my office, and proved before me, in my office, by the oaths of Thomas Towles, Jr., and L. W. Powell, subscribing witnesses thereto, to be the act and deed of the said Levi Jones, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 30th day of October, 1841.

WILL. D. ALLISON.

No. 23.

This indenture, made this 30th day of October, 1841, between Levi Jones, of the Republic of Texas, of the first part, and Jackson McClain and John Stanley, of the county of Henderson and State of Kentucky, of the second part, both the said parties of the second part being the executors of the last will and testament of James McClain, deceased, and acting in that capacity in the premises, witnesseth: That the said party of the first part, for and in consideration of the sum of two thousand dollars to him in hand paid, the receipt of which is hereby acknowledged, hath this day bargained and sold, and by these presents do, grant and convey, unto the said
1041 party of the second part, executors as aforesaid, all that tract or parcel of land, lying in the county and State aforesaid, on the Green River Island, of which James McClain was seized and possessed at the time of his death, and which is now in the possession of the executors aforesaid, and bounded on the lower side by the lands of Eggleston Matthews, deceased, and on the upper side by the lands of Jackson McClain, and running across the said island, containing two hundred and ninety acres, more or less; to have and to hold the said above-described tract of land to the said party of the second part, executors as aforesaid, their heirs and assigns, forever, free and clear from the claim or claims of the said Jones and all persons claiming by, through, or under him; and the said Jones doth also hereby covenant and agree to and with the said parties of the second part, executors as aforesaid, that he will forever warrant and defend the above-conveyed premises to them, their heirs and assigns, free and clear from all manner of claim or claims, disturbance or disturbances, from John Slaughter, Smith Slaughter, Zephaniah Noe, and Mary, his wife, and all persons claiming by, through, or under them, or either of them.

In testimony of all which the said party of the first part hath hereunto set his hand and affixed his seal the year and day above written.

LEVI JONES. [SEAL.]

1042 THOMAS TOWLES, JR.
L. W. POWELL.

The words "now in possession of the executors aforesaid and" interlined before signing by me.

LEVI JONES.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Levi Jones to Jackson McClain and John H. Stanley, executors of Jas. McClain, deceased, was this day acknowledged before me in my office by the said Levi

Jones to be his act and deed, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 30th day of November, 1841.

WILL. D. ALLISON.

No. 24.

This indenture, made this 27th day of December, 1844, between Æneas M. Barnett and Caroline Barnett, his wife, of the one part, and Philip Crow, of the other part, said Barnett & wife of Henderson county, Kentucky, and said Crow of Vanderburgh county, witnesseth: That the said Æneas M. Barnett and Caroline, his wife, for and in consideration of the sum of one thousand dollars to
1043 them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said Philip Crow, his heirs or assigns, a certain tract or parcel of land lying and being in Henderson county, State of Kentucky, on the Green River Island, and bounded as follows, to wit: Beginning at a sugar tree on the bank of the Ohio river, with Abraham Franceway, running thence with said Franceway line N. 60 E. 120 poles, more or less, to the Indiana State line on the north side of said Green River Island; thence up the bayou with the Indiana line to the head of the island; thence round and with the head of said island to the main river, Ohio, and down the same to the beginning, containing by estimation about one hundred and thirty acres, & said Crow is to take & hold the said land according to the above boundaries, whether it contains more or less than 130 acres; to have and to hold the same, with all the rights and appurtenances thereunto belonging or in anywise appertaining, unto him, the said Philip Crow, his heirs or assigns, forever; and the said Æneas M. Barnett hereby covenants and agrees to and with the said Philip Crow that he, the said Barnett, will forever warrant and defend the title of said land, with the appurtenances, unto the said Crow, his heirs or assigns, against the claim or claims of himself and his heirs and against all persons
1044 claiming or deriving title by, through, or under him, but said Barnett is not to warrant against any claim to said land other than such as may be derived or set up under him or his heirs. It is agreed, however, that said Philip Crow shall have the benefit of the covenant of warranty contained in a deed made by Levi Jones to said Barnett for the above land in as full a manner as said Barnett could use the same. In testimony whereof the said Æneas M. Barnett & Caroline, his wife, have hereunto subscribed their names and affixed their seals the date first above written.

ÆNEAS M. BARNETT. [SEAL.]
R. CAROLINE BARNETT. [SEAL.]

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Æneas M. Barnett & Caroline, his wife, to Philip Crow was, on the 27th day of December,

1844, acknowledged before me, in my office, by the said Æneas M. Barnett to be his act and deed; and afterwards, to wit, on the 8th day of August, 1845, she, the said Caroline Barnett, being examined by me privily and apart from her husband, declared
1045 that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed, and consented that the same might be recorded, and thereupon the same, together with this certificate, was truly recorded in my office. Witness my hand this 8th day of August, 1845.

WILL. D. ALLISON.

No. 25.

This indenture, made this 11th day of October, 1845, between Isaac Z. Frields and Nancy Frields, his wife, of the one part, and Jackson McClain, James McClain, and William McClain, of the other part, all of the county of Henderson & State of Kentucky, witnesseth: That the said Isaac Z. Frields and Nancy, his wife, for and in consideration of the sum of two hundred & seventy-five dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, & by these presents do sell and convey, unto the said Jackson, James, and William McClain all the undivided interest of them, the said Isaac Z. Frields and Nancy Frields, in and to all the lands which Eggleston Matthews, deceased, died possessed of, situate, lying, and being on Green River Island,
1046 in Henderson county, Kentucky, to wit: A tract of land containing two hundred & forty acres, & was conveyed to the said Eggleston Matthews by the heirs of Robert Terry, deceased, by deed duly recorded in the Henderson county court in Book "F," page 491. (to which said deed reference is here made for a more particular description of said land), and which said tract of land descended to the children and heirs of said Eggleston Matthews, deceased, the said Nancy Frields being one of them; to have and to hold the said undivided interest of them, the said Isaac Z. Frields & Nancy, his wife, in & to the land above mentioned, unto them, the said Jackson, James, & Wm. McClain, their heirs and assigns, forever; and the said Isaac Z. Frields and Nancy Frields, his wife, covenant to and with the said Jackson, James, and William McClain that they will forever warrant and defend the title to their undivided interest in said land against the claim or claims of all persons whomsoever.

In witness whereof the said Isaac Z. Frields and Nancy Frields, his wife, have hereunto subscribed their names and affixed their seals the day and year first above written.

his
ISAAC Z. x FRIELDS. [SEAL.]
mark.

her
NANCY H. x FRIELDS. [SEAL.]
mark.

1047 STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Isaac Z. Frields and Nancy H. Frields, his wife, to Jackson McClain, James McClain, and William McClain was this day acknowledged before me in my county by the said Isaac Z. Frields to be his act and deed; and she, the said Nancy H. Frields, being examined by me privily and apart from her husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed, and consented that the same might be recorded; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 11th day of October, 1845.

WILL. D. ALLISON.

No. 26.

This indenture, made this 8th day of July, 1846, between Philip Crow & Eliza Crow, his wife, of Henderson county, State of Kentucky, of the first part, and Moses Aiken, of Vanderburgh county, State of Indiana, of the second part, witnesseth: That the
1048 said Philip Crow and Eliza, his wife, for and in consideration of the sum of fifteen hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the said Moses Aiken, his heirs or assigns, a certain tract or parcel of land lying and being in Henderson county, State of Kentucky, on the Green River Island, and bounded as follows, to wit: Beginning at a sugar tree on the bank of the Ohio river, corner with Abraham Franceway, running thence with said Franceway's line north 6° east 120 poles, more or less, to the Indiana State line on the north side of said Green River Island; thence up the bayou with the Indiana line to the head of the island; thence round and with the head of said island to the main river, Ohio, and thence down the same to the beginning, containing, by estimation, about one hundred and thirty acres, and said Aiken is to take and hold the said land according to the above boundaries, whether it contains more or less than 130 acres, being the same land which was conveyed to the said Philip Crow by Æneas M. Barnett and wife, and was conveyed to the said Æneas M. Barnett by Levi Jones, as will appear by deed recorded in the clerk's office of the Hender-
1049 son county court; to have and to hold the said tract of land above described, with all the rights and appurtenances thereunto belonging or in anywise appertaining, unto him, the said Moses Aiken, his heirs or assigns, forever; and the said Philip Crow hereby covenants and agrees to and with the said Moses Aiken that he, the said Crow, will forever warrant and defend the title of said land, with the appurtenances, unto him, the said Moses Aiken, his heirs

or assigns, against the claim or claims of himself and his heirs and against all persons claiming or deriving title by, through, or under him; but said Crow is not to warrant against any claim to said land other than such as may be derived or set up under him or his heirs. It is agreed, however, that the said Moses Aiken shall have the full benefit of any and all covenants of warranty contained in the deed from the said Æneas M. Barnett to the said Crow or in the deed from the said Levi Jones to the said Æneas M. Barnett in as full and ample a manner as the said Crow could use the same.

In testimony whereof the said Philip Crow and Eliza Crow, his wife, have hereunto subscribed their names and affixed their seals the date first above written.

PHILIP CROW. [SEAL.]
ELIZA CROW. [SEAL.]

1050 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that the deed from Philip Crow and Eliza Crow, his wife, to Moses Aiken was this day acknowledged before me in my office by the said Philip Crow to be his act and deed, and she, the said Eliza Crow, being then and there examined by me privily and apart from her husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the said deed, again shown and explained to her, to be her act and deed, & consented that the same might be recorded; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 8th day of July, A. D. 1846.

WILL. D. ALLISON.

No. 27.

This indenture, made this twenty-first day of July, in the year of our Lord one thousand eight hundred and forty-six, between John Garrett, of the first part, and Corydon Garrett, of Vanderburgh county, Indiana (his son), of the second part, witnesseth:

1051 That the said party of the first part, for and in consideration of the sum of fourteen hundred dollars, current money of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, all that certain tract of land situate and being on Green River Island, and bounded as follows: Beginning on the bank of the Ohio river at the centre or middle of the line dividing the possessions of the said John Garrett and the possessions of the late Abraham Franceway, running thence along the middle of said lane to the bank of the bayou; thence down the bank or margin of the bayou to a point from whence a line drawn parallel with said line to the Ohio river and from thence up said river to the place of beginning will include

one hundred acres, it being the same place that the said John Garrett lives upon, on said Green River Island, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, & title of the said party of the first part of, in, or to the same; to have and to hold the land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the second
1052 part, his heirs and assigns, forever; and the said party of the first part, for himself, his heirs, executors, and administrators, hereby covenants that he and his heirs are to stand seized of said land and premises to the use of said Corydon Garrett, his heirs and assigns, at the death of the said John Garrett, the said John to stand seized to his own use of said premises during his natural life, and the said John Garrett for himself, his heirs, executors, and administrators, from and after the death of the said John Garrett, hereby doth and will warrant and forever defend by these presents.

In witness whereof I hereunto set my hand and seal the day and year first aforesaid.

JOHN GARRETT. [SEAL.]

STATE OF INDIANA, *Vanderburgh County,* } *sct:*

I, James Lockhart, president judge of the fourth judicial circuit in and for the State of Indiana and in and for said county, do hereby certify that on this the 22d day of July, A. D. 1846, the above-named John Garrett personally came before me and acknowledged the foregoing indenture to be his voluntary act and deed for the purpose therein mentioned.

Witness my hand and seal, at Evansville, this the date last
1053 above written.

JAMES LOCKHART, [SEAL.]
Pres't Judge, 4th Circuit.

STATE OF INDIANA, *Vanderburgh County,* } *sct:*

I, Samuel T. Jenkins, clerk of the Vanderburgh circuit court, do hereby certify that James Lockhart, Esq., whose name is signed to the within and foregoing certificate, was at the date thereof and now is a circuit judge in the fourth judicial circuit in and for the State of Indiana, and that full faith and credit are due to all his official acts as such judge.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the official seal of said court, at office, in Evansville, the 15th day of August, A. D. 1846.

SAMUEL T. JENKINS, *Cl'k,*
By R. JENKINS, *Dep't.*

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court for the county

aforesaid, do certify that this deed from John Garrett to Corydon
1054 Garrett and the above certificates endorsed thereon authenticating it, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 26th day of September, A. D. 1846.

WILL. D. ALLISON.

No. 28.

This indenture, made this 30th day of October, in the year 1847, between Moses Aiken and Nancy J. Aiken, his wife, of the county of Vanderburgh, in the State of Indiana, of the first part, and William Yates, of the county of Henderson and State of Kentucky, of the second part, witnesseth:

That the said Moses Aiken and Nancy J., his wife, for and in consideration of the sum of sixteen hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, have sold and by these presents do sell and convey unto the said William Yates a certain tract or parcel of land lying and being in Henderson county, Kentucky, on the Ohio river and on Green River Island, containing one hundred and thirty acres, and bounded as follows, to wit: Beginning at a sugar tree on the bank of the Ohio river, corner to Abraham Franceway, running thence with said Franceway's line north 60° east 120 poles, more or less, to the Indiana State line, on the north side of said Green River Island; thence
1055 up the bayou with the Indiana State line to the head of the island; thence round and with the head of said island to the main river, Ohio, and thence down the same to the beginning, being the same tract of land conveyed to the said Aiken by Philip Crow & wife by deed bearing date the 8th day of July, 1846, and duly recorded in the clerk's office of the Henderson county court; to have and to hold the above-described tract or parcel of land, with all and singular the appurtenances thereunto belonging or in anywise appertaining, unto him, the said William Yates, his heirs and assigns, forever; and they, the said Moses Aiken & wife, covenant & agree to & with the said Yates that they will forever warrant and defend the title to the above-described tract of land unto him, the said Yates, against the claim of themselves, their heirs, and all persons claiming by, through, or under them, and against the claim or claims of all and every other person or persons whomsoever.

In testimony whereof the said Moses Aiken and Nancy J. Aiken, his wife, have hereunto subscribed their names and affixed their seals the date first above written.

MOSES AIKEN. [SEAL.]
—— ——. [SEAL.]

1056 STATE OF KENTUCKY, } *scl:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Moses Aiken & Nancy J. Aiken, his wife, to William Yates was acknowledged before me

in my office on the 6th day of November, 1847, by the said Moses Aikin to be his act and deed, and the same, together with this certificate, was this day truly recorded in my office.

Witness my hand this 23 day of February, 1849.

WILL. D. ALLISON.

No. 29.

This deed of partition and division & of bargain and sale, made this 13th day of May, A. D. 1848, between Jackson McClain, of the first part, James McClain, of the second part, and William McClain, of the third part, all of Henderson county, State of Kentucky, and all of whom are devisees of James McClain, deceased, witnesseth: That whereas the said James McClain, deceased, by his last will and testament, which is of record in the clerk's office of the Henderson county court, devised all his land to his three sons—the said Jackson, James, & William McClain—having willed one hundred acres, the homestead, to his wife, Ann McClain, during her
1057 natural life; and besides said tract of one hundred acres the said James McClain, deceased, died seized and possessed of the following tracts of land, to wit: One tract composed of several parcels, containing altogether five hundred and seventy-three and a half acres, lying in Henderson county, on the Ohio river, and bounded as follows, viz: Beginning at a hackberry & elm, running S. 61° 40′ E. 444 poles to two lind trees; thence N. 29° E. 86 poles to a black oak and hickory; thence N. 17° W. 10 poles; thence N. 12° E. 31 poles to a double walnut; thence N. 49° W. 19 poles, N. 59° W. 14 poles to 2 red oaks; thence N. 9° W. 38 poles to an ash; thence N. 70 W. 25 poles to a locust; thence N. 58° W. 10 poles to an ash & hickory; thence N. 70° W. 52 poles to a sassafras; thence N. 59° 10′ W. 26 poles to the foot of the river hill; thence N. 55° W. 50 poles to a sweet gum & red-oak stump; thence N. 29° E. 254 poles to a cluster of honey locusts on the bank of the river; thence down the Ohio river, with the meanders thereof, N. 83° W. 80 poles, N. 78° west 26 poles, N. 83° W. 40 poles, N. 88° W. 26 poles, N. 80° W. 59 poles, to a stake on the river bank; thence S. 29° W. 322 poles to the beginning, containing 573½ acres, more or less, and one tract on Green River Island, in said county of Henderson, con-
1058 taining three hundred and eighty-seven acres. Of this tract on Green River Island, the said James McClain directed by his will that the said Jackson McClain should have seventy acres off the upper side at its value. These three tracts of land above mentioned the said Jackson, James, & William McClain, by mutual consent and agreement, have divided amongst themselves, leaving the other lands devised to them by the said James McClain, deceased, for future action. The said parties agreed to divide the said three tracts above mentioned equally among them, rating the tract on Green River Island at $20 per acre, and the tract of 100 acres, willed to the widow during her life, at $20 per acre, and the tract containing 573½ acres at $12.50 cents per acre. The tract on Green River Island being divided into three parts gives each of

said devisees 129 acres, and by the division and agreement aforesaid Jackson McClain takes his share—129 acres—on the upper side of said tract, highest up the river, running across from the river to the bayou or Indiana State line, & which includes the 70 acres willed to him at its value, leaving the said James & William each 129 acres below. The said James McClain & William McClain further agreed to make an exchange, as follows: James exchanges & sells his undivided interest, being one-third in the above-described tract of 573½ acres, at $12.50 per acre, for William's undivided
1059 interest in the tract on Green River Island, at $20 per acre. William's share in the tract on Green River Island is 129 acres at $20 per acre, making $2,580, and James' share in 573½ acres tract is 191⅙ acres, at $12.50 cents per acre, — makes $2,389.58 cts. The said William has sold his two-thirds, being his own share and the share of James exchanged for as aforesaid, in the said 573½ acres tract of land to Jackson McClain for the sum of four thousand seven hundred and seventy-nine dollars and 16 cents, being at the rate of $12.50 cts. per acre, and the said Jackson McClain and William McClain have sold their undivided interests (being one-third each) in the one-hundred-acre tract to the said James McClain for $20 per acre, amounting to six hundred & sixty-six dollars 66⅔ cents for each interest, the said James McClain taking the same subject to the life estate of said Ann McClain, the widow, and thus the said William McClain has sold out all his interest in the said three tracts of land; but as no deeds of conveyance, exchange, or other sort have passed or been made between the said parties upon the exchanges, division, & sales aforesaid, they now make them all by this one deed, the sums mentioned above all being arranged & paid & secured to be paid, as agreed on, between the parties: Now, therefore, be it known, and this
1060 indenture witnesseth: That the said Jackson McClain & William McClain, for and in consideration of the premises & of the sum of money hereinbefore mentioned, do grant, bargain, sell, convey, quitclaim, & release unto the said James McClain all their interest, right, title, and claim of, in, and to 258 acres of land on Green River Island, in Henderson county, Kentucky, being two-thirds of the land which belonged to the said James McClain, deceased, on said Green River Island, and which was allotted to said James & Wm. McClain in the division aforesaid; also all their interest, right, title, and claim in and to the tract of one hundred acres of land willed by the said James McClain, deceased, to his widow during her life, their interest in said one hundred acres being one-third each undivided; to have and to hold the same, with the appurtenances, unto him, the said James McClain, his heirs & assigns, forever, subject to the widow's life estate in said 100 acres; and the said Jackson & William McClain will warrant the title of their interests in said lands hereby conveyed unto him, the said James McClain, his heirs and assigns, against all claims whatsoever; and the said James McClain and William McClain, in like manner and for the like consideration as hereinabove ex-
1061 pressed, do grant, bargain, sell, convey, quitclaim, and re-

lease unto the said Jackson McClain all their interest, right, title, & claim of, in, and to 129 acres of land on Green River Island, in Henderson county, Kentucky, being one-third of the land on said Green River Island which belongs to the said James McClain, deceased, being the upper part thereof, allotted to him as aforesaid; also all their interest, right, title, & claim in & to the tract of land, containing 573½ acres, hereinabove described, their interest being one-third part each undivided; to have and to hold the same, with all the appurtenances, unto him, the said Jackson McClain, his heirs and assigns, forever; and the said James McClain & William McClain will warrant the title of their interests in said lands hereby conveyed unto him, the said Jackson McClain, his heirs or assigns, against all claims whatsoever.

In testimony whereof the said Jackson McClain, James McClain, and William McClain have hereunto subscribed their names, & affixed their seals the date first above written.

JACKSON McCLAIN. [SEAL.]
JAMES McCLAIN. [SEAL.]
WM. McCLAIN. [SEAL.]

1062 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed was acknowledged before me in my office on the 13th day of May, 1848, by Jackson —, James McClain, and William McClain, the parties thereto, to be their act and deed, and by their order the same, together with this certificate, was this day truly recorded in my office.

Witness my hand this 14th day of Sept., 1856.

WILL. D. ALLISON.

No. 30.

This indenture, made this 23rd day of February, A. D. 1849, between William Yates and Sarah L. Yates, his wife, of the one part, and Corydon Garrett, of the other part, all of the county of Henderson and State of Kentucky, witnesseth: That the said William Yates and wife, for and in consideration of the sum of sixteen hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Corydon Garrett, his heirs & assigns, a certain tract or parcel of land lying and being in Henderson county, State of Kentucky
1063 aforesaid, on the Ohio river, on Green River Island, containing one hundred and thirty acres and bounded as follows, viz: Beginning at a sugar tree on the bank of the Ohio river, corner to Franceway, thence with Franceway N. 6° E. 120 poles, more or less, to the Indiana State line, on the north side of said island; thence up the bayou with the Indiana State line to the head of the island; thence round and with the head of said island to the main river, Ohio, and thence down the said river Ohio to the beginning, being

the same tract conveyed to said Yates by Moses Aikin & conveyed to said Aikin by Philip Crow & wife; to have and to hold the same, with all the appurtenances thereunto belonging or in anywise appertaining, unto him, the said Corydon Garrett, his heirs or assigns, forever; and the said William Yates hereby covenants that he will and his heirs shall forever warrant & defend a good title in fee simple in & to said tract of land above described, with the appurtenances, unto him the said Corydon Garrett, his heirs and assigns, against the claim or claims of himself & his heirs and against all persons claiming under him, and against the claims or incumbrances of all and every other person or persons whomsoever, firmly by these presents.

In testimony whereof the said William Yates & Sarah L., his wife, have hereunto subscribed their names and affixed their
1064 seals the date first above written.

WILLIAM YATES. [SEAL.]
—— ——. [SEAL.]

This writing further witnesseth: That the said William Yates, for and in consideration of the sum of four hundred & thirty-eight dollars to him in hand paid by said Corydon Garrett, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Garrett the following property, at the prices annexed, to wit:

Five hundred bushels of corn, at	$100
2 yoke of steers	60
3 plows	17
3 head of cattle	21
4 horses	120
2 wagons	50
30 head of hogs	35
1 flat-boat & skiff	30
4 pair gears	5
	$438

To have and to hold the said property above mentioned & unto the said Corydon Garrett, his heirs and assigns, free & clear from all claims whatsoever.

In witness whereof the said Wm. Yates hath hereunto set his hand & seal the 23 day of February, 1849.

WILLIAM YATES. [SEAL.]

1065 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from William Yates and his wife to Corydon Garrett and the annexed conveyance of personal property were both this day acknowledged before me in my office by the

said William Yates to be his act and deed, and thereupon the same, together with this certificate, were truly recorded in my office.

Witness my hand this 23 day of February, 1849.

WILL. D. ALLISON.

No. 31.

This indenture, made this twenty-sixth day of June, A. D. 1849, between John Franceway, of Henderson Co., Ky., of the first, and Corydon Garrett, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of sixty dollars to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, and sell, unto the said party of the second part and his heirs and assigns forever all of his right, title, and interests in and to the estate, both real and personal, in said county of
1066 Henderson, and also in the county of Spencer, in the State of Indiana, of which Abraham Franceway died seized, the said party of the first part being one of the children and heirs-at-law of the said Abraham Franceway; to have and to hold the lands, premises, and personal property above mentioned and the interest therein above described to the said party of the second part and his heirs and assigns forever; and the said party of one part hereby authorizes and empowers the said party of the second part to demand, receive, and sue for all personal property of said estate hereby bargained and sold to the said party of the second part.

In witness whereof the party of the first part has hereto set his hand and seal this the day and year first above written.

JOHN FRANCEWAY. [SEAL.]

INDIANA, *ss:*

I, James Lockhart, president judge of the 4th judicial circuit in and for the State of Indiana, hereby certify that the above-named grantor, John Franceway, this 26th day of June, 1849, personally came before me at my office, in the city of Evansville, and acknowledged that he signed, sealed, and delivered the foregoing indenture for the uses and purposes therein expressed

JAMES LOCKHART,
Pres't Judge 4th Judicial Circuit, Ia.

1067 STATE OF INDIANA, *Vanderburgh County:*

I, Samuel T. Jenkins, of the Vanderburgh circuit court, do certify that James Lockhart, Esq., whose signature appears to the within certificate, is now and was at the date of the same acting president judge of the fourth judicial circuit in and for the State of Indiana, duly commissioned and qualified, & that full faith & credit are due to all of his official acts as such.

In testimony whereof I have hereto set my hand and
[L. S.] affixed the seal of said court, at Evansville, the 30th day of June, A. D. 1849.

SAM'L T. JENKINS, *Clk.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court for the county aforesaid, do certify that this deed from John Franceway to Corydon Garrett and the foregoing certificate endorsed thereon of the acknowledgement and authentication thereof, and also the certificate, were all this day truly recorded in my office.

Witness my hand this 20th day of July, 1849.

WILL. D. ALLISON.

1068 No. 32.

This indenture, made this 25th day of December, 1849, between Willie Sugg, of the first part, and Corydon Garrett, of the second part, both of the county of Henderson and State of Kentucky, witnesseth: That the said party of the first part, for and in consideration of one hundred dollars paid by the party of the second part, the receipt of which is hereby acknowledged, hath this day bargained and sold, and by these presents do grant, bargain, sell, enfeoff, convey, and confirm, unto the party of the second part all the undivided interest in the following-described land, being one-half and contained in a survey of 314 acres, which was patented to Edmund Talbot and the said Willie Sugg on the 14th July, 1841, by the State of Kentucky, lying in the aforesaid county, on the Green River Island, and bounded as followeth: Beginning at a hackberry standing on the north bank of said island, corner of a survey made for Jessie Lane, running with Lane's line across the bayou N. 15° E. 30 poles to a stake at or near the sycamore called for in said Lane's survey, on the north bank of said bayou; then down with the several courses of the top of said bank so far as a due south course will strike a corner of 49 acres, surveyed in the name of Robert Terry, at lower point of said island; thence with the several courses
1069 of the top of the bank of said island and up the north side thereof S. 26° E. 144 poles, S. 36° E. 160 poles, S. 40° E. 124 poles, S. 50° E. 124 poles, S. 55° E. 90 poles, S. 60° E. 82 poles, S. 64° E. 127 poles to the beginning; to have and to hold the said land, with all and singular its appurtenances, to the said Corydon Garrett and his heirs forever; and the said Willie Sugg, for himself, his heirs, executors, & doth covenant with the said C. Garrett and his heirs that he, the said Sugg, will warrant and forever defend the said tract or parcel of land against the lawful claim or claims of all persons whatsoever.

In testimony whereof the said Sugg hath hereunto set his hand — affixed his seal the day and date first above written.

WILLIE SUGG. [SEAL.]
KIZIA SUGG. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Willie Sugg and

Kizia Sugg, his wife, to Corydon Garrett was this day acknowledged before me, in my office, by the said Willie Sugg to be his act and deed; and the said Kizia Sugg, being examined by me pri-
1070 vately and apart from her husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the said deed, again shown and explained to her, to be her act and deed, and consented that the same might be recorded; and thereupon the same, together with this certificate, was truly recorded in my office. Witness my hand this 21st March, 1850.

WILL. D. ALLISON.

No. 33.

This indenture, made this 28th day of November, 1850, between Henry Dixon Green & Susan, his wife, of the one part, and Richard B. Atkinson, of the other part, witnesseth: That the said Henry Dixon Green & Susan, his wife, for & in consideration of fifteen hundred dollars in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, & by these presents do grant, bargain, & sell, unto the said Richard B. Atkinson, his heirs and assigns, all tract or parcel of land situate & being in the county of Henderson, on the Green River Island, which was allotted by commissioners (appointed by the Henderson county court to divide a tract of land on said island between the heirs of Gabriel Green, deceased, & Wm. Green) to Henry Dixon Green, Gabriel G.
1071 Green, & his wife, Sarah A. Allen, heirs of Gabriel Green, deceased, and bounded as follows, to wit: Beginning at 4 cotton-woods & 2 small maples standing on the south side of said island, running with Mathews' line N. 1° E. 356 poles to an elm on the bank of the bayou, which was formerly Robert Terry's corner; thence S. 47° 30′ W. 218 poles to 3 cotton-woods on the south bank of the island; thence up with the meanders of the river to the beginning, containing 189 acres, which is the upper part of the tract which was patented to Gabriel & Wm. Green, together with all & singular the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said Richard B. Atkinson, his heirs and assigns, forever; and the said Henry D. Green & Susan, his wife, for themselves, their heirs, executors, & administrators, the aforesaid tract of land and appurtenances unto the said Richard B. Atkinson, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, do and will forever warrant and defend by these presents. In witness the said Henry D. Green & Susan, his wife, who hereby relinquish- her right of dower in and to the lands conveyed in this deed, hath hereunto set their hands and seals the day and date first above written.

1072 HENRY D. GREEN. [SEAL.]
SUE B. GREEN. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Henry D. Green & Susan B., his wife, to Richard B. Atkinson was this day acknowledged before me in my county by the said Henry D. Green to be his act and deed, and she, the said Sue B., being examined by — privately and apart from her said husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed, and consented that the same might be recorded; and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 30th day of Nov., 1850.

WILL. D. ALLISON.

No. 34.

This indenture, made this 13th day of April, 1852, between William Green and Fanny Green, his wife, of the one part, and Richard B. Atkinson, of the other part, all of Henderson county, State
1073 of Kentucky, witnesseth: That the said William Green and Fanny, his wife, for and in consideration of the sum of eighteen hundred & fifty-six dollars to them in hand paid and secured to be paid, the receipt whereof is hereby acknowledged, have bargained & sold, and by these presents do grant, bargain, sell, and convey, to the said Richard B. Atkinson a certain tract or parcel of land lying and being in Henderson county and State aforesaid, on Green River Island, being part of a tract patented to said Wm. Green & Gabriel G. Green, and which was allotted to said William Green in the division between him & said Gabriel G. Green's heirs, and bounded as follows, to wit: Beginning at an elm on the bayou, running thence S. 47° 31 W. 218 poles to 3 cotton-woods, thence down the meanders of the river N. 21° W. 78 poles, N. 8° W. 136 poles, north 56 poles to a stake at the lower corner called for in Green's patent; thence N. 51 E. 96 poles to a hackberry, elm, & box elder on the bank of the bayou 220 poles to the beginning, containing two hundred and thirty-seven acres by survey & calculation, and the consideration is eight dollars per acre; to have and to hold the said tract of land above described, containing 232 acres, with all the appurtenances thereunto belonging or in anywise appertaining, unto him, the said Richard B. Atkinson, his
1074 heirs or assigns, forever; and the said Wm. Green and Fanny, his wife, do hereby covenant that they will, and their heirs shall, forever warrant and defend the title of said land above described and hereby conveyed unto him, the said Richard B. Atkinson, his heirs or assigns, against the claim or claims of themselves & their heirs and all persons claiming under them, and against the claim or claims of all and every other person or persons whomsoever.

In testimony whereof the said William Green and Fanny Green,

his wife, have hereunto subscribed their names and affixed their seals the date first above written.

WM. GREEN.
FANNY GREEN.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Wm. Green and Fanny Green, his wife, to Richard B. Atkinson was acknowledged before me, in my office, on the 13th day of April, 1852, by the said William Green to be his act and deed, and on the 20th day of October, 1852, she, the said Fanny Green, being examined by me
1075 privily and apart from her husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed, and consented that the same might be recorded, and the same, together with this certificate, was this day truly recorded in my office.

Witness my hand this 2nd day of November, 1852.

WILL. D. ALLISON.

No. 35.

This indenture, made this twenty-sixth day of January, in the year 1852, between George W. Yates, of the county of Henderson and Commonwealth of Kentucky, of the one part, and Corydon Garrett, of the county of Vanderburg & State of Indiana, of the other part, witnesseth: That the said George W. Yates, for and in consideration of one thousand dollars in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Corydon Garrett, his heirs and assigns, all that tract or parcel of land situated and being in the county of Henderson aforesaid, on Green River Island, in the Ohio river, and bounded as follows, to wit: Beginning at a black walnut and sycamore corner to the tract of land now owned by the said Garrett, on the bank of the main Ohio river, thence
1076 running N. 60° E 144 poles to the north side of the island chute; thence S. 75° E. 54⅔ poles to a stake; thence — 60° W. 146 poles to a sugar tree and stake on the bank of the main Ohio river; thence N. 86° W. 54⅔ poles to the beginning, containing 48 acres, be the same more or less, it being the tract of land known as the Francéway tract, together with all and singular the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto —; the said George W. Yates, for himself, his heirs, executors, and administrators the aforesaid tract of land and appurtenances unto the said Corydon Garret, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever claiming under or through the said George W. Yates, doth & will forever warrant and defend by these presents.

In witness whereof the said Geo. W. Yates, together with Susanna E. Yates, his wife, who hereby relinquishes her right of dower in and to the lands conveyed in this deed, have hereunto set their hands and seals the day and date first above written.

GEORGE W. YATES.
SUSANNAH E. YATES.

Signed, sealed, & delivered in the presence of—
—— ——.

1077 STATE OF INDIANA, } *sct:*
City of Evansville, }

I, John J. Chandler, commissioner of the State of Kentucky, duly appointed & commissioned by the Governor thereof for the State of Indiana to take the acknowledgements of deeds, &c., do certify that the foregoing deed was this day produced to me, at my office, in said city, and the said George W. Yates acknowledged the same to be his act and deed, and the said Susanna E. Yates, being examined by me privily & apart from her husband, declared that she did freely & willingly seal and deliver the said deed, again shown & explained to her, to be her act & deed, & consenteth that the same may be recorded, which is hereby certified to the proper registering officer in the State of Kentucky, where the premises lay.

Given under my hand & seal this 28th January, 1852.

[L. S.] JOHN J. CHANDLER,
Commissioner.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Geo. W. Yates & *ux.* to Corydon Garret and the foregoing certificate of
1078 the acknowledgment thereof, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 2nd day of March, 1852.

WILL. D. ALLISON.

No. 36.

This indenture, made and entered into this November 2nd, 1852, between Gabriel G. Green and Frances P. Green, his wife, and Henry D. Green, all of the county of Henderson and State of Kentucky, witnesseth: That for and in consideration of the sum of five hundred dollars to them in hand paid, the receipt of which is hereby acknowledged, the said G. G. Green and Frances P. Green, his wife, have this day granted, bargained, and sold and — Henry D. Green their undivided interest — a certain tract or parcel of land lying on Green River Island, and bounded as follows, to wit: Beginning at 4 cotton-woods and 2 small maples standing on south side of said island, running with Mathews' line N. 1° E. 366 poles to an elm on the bank of the bayou, which was formerly Robert Terry's corner,

thence S. 47° 30 W. 218 poles to 3 cotton-woods on the south bank of the island; thence up with the meanders of the river to the beginning, together with all and singular the appurtenances
1079 thereunto belonging; to have and to hold the said land hereby conveyed, with the appurtenances, unto the said H. D. Green, his heirs or assigns, forever, free and clear from all claims whatsoever.

Witness our hand and seals the day and date first above written.

GABRIEL G. GREEN.
FRANCES P. GREEN.

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Gabriel G. Green and Frances P. Green, his wife, to Henry D. Green was this day acknowledged before me in my office by the said Gabriel G. Green to be his act and deed, and the said Frances P. Green, his wife, being examined by me privily and apart from her husband, declared that she did freely and willingly sign, seal, and deliver the said deed and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed, and consented that the same might be recorded, and thereupon the same, together with this certificate, was truly recorded in my office.

Witness my hand this 2nd day of November, 1852.

WILL. D. ALLISON.

1080 No. 37.

This indenture, made this third day of September, A. D. 1852, between Corydon Garrett and Sarah Garrett, his wife, of the county of Vanderburgh, in the State of Indiana, parties of the first part, and Wilda Stansberry, of the county of Henderson, in the Commonwealth of Kentucky, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of nine hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part and to his heirs and assigns the following-described tract of land, situated in the said county of Henderson and State of Kentucky, on Green River Island, in said county, to wit: Beginning at a stake on the bank of the Ohio river (being the S. E. corner of the Franceway place, so called, and running from thence south 87° E. 14 chains and fifty links to a stake; thence north 6° 50′ east 32 chains and 50 links to a stake on the north side of bayou and south side of the highway; thence along the highway N. 74° west fifteen chains and ten links to a black walnut stump, and thence south 6° 50′ west forty-five chains to the place of beginning, containing forty-seven acres and $\frac{78}{100}$ of an acre, be the same
1081 more or less, together with all and singular the appurtenances thereunto belonging or in anywise appertaining; to have and

to hold the above-granted premises to the said party of the second part and to his heirs and assigns forever; and the said Corydon Garrett, party of the first part, hereby covenants to and with the said party of the second part and his heirs and assigns that he will warrant and defend the above-granted premises to the said party of the second part and to his heirs and assigns against the claims of the said parties of the first part and all persons claiming by, from, through, or under the said parties of the first part, but not against the claim or claims of any other person or persons whatsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the date first aforesaid.

CORYDON GARRETT.
SARAH GARRETT.

STATE OF INDIANA, } ss:
County of Vanderburgh, }

Before me, John J. Chandler, commissioner to take acknowledgements of deeds in said State for the State of Kentucky, this third day of September, A. D. 1852, personally came Corydon Garrett
1082 and Sarah Garrett, whose names are signed to the foregoing indenture, & acknowledged said indenture to be their voluntary act and deed; and I hereby certify that the said Sarah was by me examined separate and apart from the said Corydon, her husband, & that she thereupon declared that she did freely & willingly seal and deliver said indenture and wished not to retract it, & acknowledged said indenture, again shown & explained to her, to be her act and deed, & consented that the same should be recorded.

Given under my hand & official seal, at Evansville, in said county, Sept. 3d, 1852.

[SEAL.] JNO. J. CHANDLER,
Com. of Deeds, &c.

STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Corydon Garrett and Sarah Garrett, his wife, to Wilda Stansberry, together with the foregoing certificate of the acknowledgement thereof before the commissioner of deeds for the State of Kentucky, and also this certificate, were this day truly recorded in my office.

Witness my hand this 2nd day of November, 1852.

WILL. D. ALLISON.

1083 No. 38.

This indenture, made this first day of February, A. D. eighteen hundred & fifty-four, by and between N. D. Terry and his wife, Sarah I. Terry, of Henderson county, Kentucky, of the one part, and Horace Dunham, of the city of Evansville, State of Indiana, of the other part, witnesseth: That for and in consideration of the sum of one thousand dollars to them in hand paid

the said parties of the first — do hereby give, grant, bargain, sell, and convey to the said party of the second part, his heirs and assigns, a certain tract or parcel of land lying and being on the lower end of Green River Island and bounded as follows, to wit: Beginning at an elm, hickory, and box elder on the bayou corner to G. G. Green and William Green, thence with their line S. 51 W. 92 poles to three maples and a cotton-wood on the bank of the river, corner to G. G. Green & William Green; thence down the river with its meanderings N. 8° W. 78 poles, N. 8° E. 92 poles, N. 15° E. 16 poles to the lower part of the island; thence S. 41° E. 144 poles with and up the bayou to the beginning, containing forty-nine acres, more or less; to have and to hold the same; with its appurtenances, to him, the said party of the second part, his heirs and assigns, forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, to [do] hereby
1084 covenant to warrant and defend the same to the said party of the second part, his heirs and assigns, forever against the lawful claim or demand of all persons whomsoever.

Witness our hands and seals this 1st day of February, A. D. 1854.

N. D. TERRY.
SARAH I. TERRY.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from N. D. Terry and Sarah I. Terry, his wife, to Horace Dunham was acknowledged before me in my county, on the 2nd day of February, 1854, by the said N. D. Terry and Sarah I. Terry, to be the act and deed, and the same, together with this certificate, was this day truly recorded in my office.

Witness my hand this 20 day of March, 1854.

WILL. D. ALLISON.

No. 39.

This indenture, made this 27th day of February, 1854, between John E. McCallister, commissioner appointed by a decree of the Henderson circuit court, pronounced at its November term, 1853, in the matter of the petition of James McClain's heirs against
1085 Ann McClain & others, to sell lands, of the first part, and Jackson McClain, of the second part, witnesseth: That the said party of the first part, as such commissioner, for and in consideration of the sum of five thousand six hundred and eleven dollars and fifty cents secured to be paid, having pursued the directions of said decree in all respects, has bargained, sold, and conveyed, and does by these presents bargain, sell, and convey, to the said party of the second part, his heirs and assigns, forever a certain tract or parcel of land situated, lying, and being in the county of Henderson, on Green River Island, containing two hundred and fifty-eight acres, and for a more particular description of said tract of land

reference is here made to a deed of partition & division between Jackson McClain, the said James McClain, and William McClain, dated the 13th day of May, 1848, and duly recorded in the clerk's office of the Henderson county court in Book "N," page 230; to have and to hold the said tract or parcel of land, together with all and singular the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, free from the claim of all persons whomsoever, so far as by law and the authority vested in him by said decree he is authorized to convey, and no further, it being expressly understood that the said commissioner is not
1086 to be individually responsible for anything in this deed contained. The said commissioner reserves a lien on said tract of land in the nature of a mortgage to secure the purchase-money, no part of which has been paid.

In testimony whereof the said John E. McCallister, as such commissioner, has hereto set hand and seal the day and date aforesaid.

JOHN E. McCALLISTER. [SEAL.]

I, William D. Allison, clerk of the circuit court of Henderson county, in the State of Kentucky, do certify that at a circuit court held for said county, at the court-house, in the city of Henderson, on the 27th day of November, 1854, this deed from John E. McCallister, as such commissioner, — to be his act and deed, and the same, being examined by the court, was approved of and ordered to be certified for record, which is done accordingly.

Witness my hand this 27th day of November, 1854.

WILL. D. ALLISON, *C. H. C. C.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from John E. McCallister, com'r, to Jackson McClain and the foregoing certificate of the acknowledgement thereof, and also this certificate, were all this day truly recorded in my office.

1087 Witness my hand this 5th day of January, 1855.

WILL. D. ALLISON, *C. H. C. C.*

No. 40.

This indenture, made this 27th day of February, 1854, between John E. McCallister, commissioner appointed by the decree of the Henderson circuit court, pronounced at its November —, 1853, in the matter of the petition of James McClain's heirs against Ann McClain & others for the sale of lands, of the first part, and Jackson McClain & Wm. McClain, of the second part, all of Henderson county, in the State of Kentucky, witnesseth: That the said party of the first part, as such commissioner, for and in consideration of the sum of eleven hundred and seventy-five dollars secured to be paid, having pursued the direction of said decree in all respects, has bargained,

sold, and conveyed, and does by these presents bargain, sell, convey, and confirm, unto the said parties of the second part, their heirs and assigns, forever the undivided interests which James McClain had in and to the one-third part of the one-sixth of a tract of land lying on Green River Island, in Henderson county, containing 240 acres, and for a more particular description of the one-third of one-sixth of said tract of land reference is here made to a deed of bar-
1088 gain & sale executed by Isaac Z. Fields & Nancy, his wife, to Jackson, James, & William McClain on the 11th day of October, 1845, and duly recorded, in the clerk's office of the Henderson county court, in Book L, page 53; also one undivided third part (being fifty-eight acres) of another tract of land, containing one hundred and seventy-four acres, lying in said county, and which was devised to Jackson, James, & William McClain by their father, James McClain, Sen., deceased; to have and to hold the said undivided interests in the tracts of land before mentioned, together with all and singular the rights, privileges, and appurtenances thereto belonging or in anywise appertaining, unto the said parties of the second part, their heirs and assigns, forever, free from the claim or claims of all persons whomsoever, so far as by law and the power vested in him by said decree he is authorized to convey, and no further. It is expressly understood that the said commissioner is not to be individually responsible for anything herein contained. The said commissioner also reserves a lien on both said interests in the nature of a mortgage to secure the purchase-money, no part of which has been paid.

In testimony the said party of the first part, as such commissioner, has hereunto set his hand and affixed his seal the day and year aforesaid.

JOHN E. McCALLISTER. [SEAL.]

1089 I, William D. Allison, clerk of the circuit court of Henderson county, in the State of Kentucky, do certify that at a circuit court held for said county, at the court-house, in the city of Henderson, on the 27th day of November, 1854, this deed from John E. McCallister, commissioner, to Jackson McClain and William McClain was acknowledged in open court by the said John E. McCallister, as such commissioner, to be his act and deed; and the same, being approved of, was ordered to be certified for record, which is done accordingly.

Witness my hand this 27th day of November, 1854.

WILL. D. ALLISON, *C. H. C. C.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from John E. McCallister, com'r, to Jackson McClain & William McClain and the foregoing certificate of the acknowledgement thereof, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 5th day of January, 1855.

WILL. D. ALLISON, *C. H. C. C.*

1090 No. 41.

This indenture, made this 28th day of February, 1852, between J. M. Stone, a commissioner appointed by the Henderson circuit court, State of Kentucky, of the first part, and Corydon Garrett, of the county of Vanderburgh, State of Indiana, of the second part, witnesseth: That whereas heretofore, to wit, at the Nov. term, 1851, of said court, in a suit of Corydon Garrett against Wm. Yates, in which suit in chancery such steps were taken and proceedings had that the defendants *in* equity of redemption in and to the tract of land in the mortgage bill & exhibits mentioned be forever barred and foreclosed, and that it be sold at the court-house door, at public auction, &c., and J. M. Stone be appointed a commissioner to carry this decree into effect, and reference is made to the mortgage bill & exhibits for further particulars; and afterwards, to wit, at a county court for said county, on the 26th day of January, 1852, in obedience to said decree, said tract of land was exposed to public sale to the highest bidder, and Corydon Garrett being the highest bidder it was openly struck off and sold to him, the said Corydon Garrett, for fourteen hundred & thirty-nine dollars & fifteen cents ($1,439.15), now, therefore, this indenture witnesseth:

That the said J. M. Stone, as such commissioner, for and
1091 in consideration of the premises and by virtue of the decree aforesaid, hath sold, and by these presents doth bargain, sell, and convey, unto the said Corydon Garrett the above-described tract or parcel of land, lying on Green River Island, in Henderson county, and reference is here made to deed from P. Crow — Moses Aiken and to the mortgage mentioned for a further description; to have & to hold the same, with all and singular the appurtenances thereunto belonging or in anywise appertaining, unto him, the said Corydon Garrett, his heirs and assigns, forever, with all the right and title thereto that the said commissioner, by virtue of the decree aforesaid, has power & authority to sell & convey.

In testimony whereof the said J. M. Stone, as such commissioner, has hereunto subscribed his name and affixed his seal the date first above written.

J. M. STONE. [SEAL.]

I, William D. Allison, clerk of the circuit court of Henderson court [county], in the State of Kentucky, do certify that at a circuit court held for said county on the 4th day of June, 1852, this deed from J. M. Stone, commissioner, to Corydon Garrett was acknowledged in open court by the said J. M. Stone, as such commissioner, to be his act and deed, and the same was approved of by the court and ordered to be certified for record, which is done accordingly
1092 *which is done accordingly.* Witness my hand this 4th day of June, 1852.

WILL. D. ALLISON.

STATE OF KENTUCKY, } sct:
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from J. M. Stone, commissioner, to Corydon Garrett and the foregoing certificate of the acknowledgement thereof in the circuit court, and also this certificate, were all this day truly recorded in my office. Witness my hand this 12th day of July, 1852.

WILL. D. ALLISON.

No. 42.

This indenture, made this fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-four, between Corydon Garrett and Sarah Garrett, his wife, of Vanderburgh county, in the State of Indiana, of the first part, and Wilda Stansberry, of Green River Island, in Henderson county and Commonwealth of Kentucky, of the second part, witnesseth: That the said parties of the first —, for and in consideration of the sum of two hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and
1093 confirm, unto the said party of the second part and his heirs and assigns forever the following-described tract or piece of land on Green River Island, in Henderson county, Kentucky, & bounded as follows, to wit: Beginning at a stake on the north bank of Green River Island and running north 6° 50 east across the bayou to the Indiana State line, thence up the bayou with said line to the northwest corner of land owned by said Stansberry; thence south 6° 50′ west along said Stansberry's line to the top of the bank on the north side of the island; thence down the bayou to the place of beginning, containing fourteen acres of land, more or less, on said Green River Island, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, and title of the said parties of the first part of, in, or to the same; to have and to hold the land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part and his heirs and
1094 assigns, against the claim of the parties of the first part and all persons claiming by, from, through, or under them or either of them (hereby only quitclaiming all our right and title to the above-described tract), do and will warrant and forever defend by these presents.

In testimony whereof the above-named parties of the first part have hereunto set their hands and seals this the date above written.

CORYDON GARRETT. [SEAL.]
SARAH GARRETT. [SEAL.]

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Asa Iglehart, judge of the court of common pleas of Vanderburgh county, Indiana, do certify that this deed or instrument of writing from Corydon Garrett and Sarah Garrett, wife of Corydon Garrett, was this day produced to me by the parties and then and there acknowledged by the said Corydon Garrett and Sarah Garrett to be their voluntary act and deed, and the contents and the effect of the instrument being explained to the said Sarah Garrett by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act & deed, and consented that the same might be recorded.

1095 Given under my hand and seal of office this 14th day of December, A. D. 1854.

ASA IGLEHART, [SEAL.]
J. C. C. P., V. C.

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Jacob Lunkenheimer, clerk of the court of common pleas of Vanderburgh county, do hereby certify that the Hon. Asa Inglehart is the sole judge of the court of common pleas for the district composed of the counties of Vanderburgh and Warrick, in the State of Indiana, duly elected and qualified and authorized by law to take the acknowledgment of deeds & other instruments of writing, & that full faith and credit are due and ought to be given to all his official acts as such judge, & that his signature to the within certificate is genuine.

[SEAL.] In testimony whereof I hereto sign my name & affix the seal of said court, at Evansville, this the 14th day of December, 1854.

JACOB LUNKENHEIMER,
C. C. C. P., V. C.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

1096 I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Corydon Garrett and Sarah Garrett, his wife, to Wilda Stansberry and the foregoing certificates of the acknowledgement and authentication thereof, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 5th day of May, 1855.

WILL. D. ALLISON, *C C. H. C.*

No. 43.

This indenture, made this the fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-four, between Corydon Garrett and Sarah Garrett, his wife, of Vanderburgh county,

in the State of Indiana, of the first part, and Wilda Stansberry, of Green River Island, in Henderson county, in the Commonwealth of Kentucky, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part and his heirs and assigns forever the following-described tract or piece of land on Green River Island, in Henderson county, Kentucky, de-
1097 scribed and bounded as follows, to wit: Beginning at a stake on the bank of the Ohio river and running north 6° 50′ east twenty-six chains and fifty links to a stake on the bank of the bayou, thence up the bayou south 88° east to the west line of land owned by said Stansberry; thence south 6° 50′ west to the bank of the Ohio river; thence down the said Green River Island, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, & title of the said parties of the first part of, in, or to the same; to have and to hold the land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns forever; and the said party of the first part, for themselves and their heirs, executors, and administrators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part, his heirs and assigns, against the claim of the parties of the first part and all persons claiming by, from, through, or under them or either of them, and against the lawful claims of all other persons whomsoever, do and will warrant and forever defend by these presents.

In testimony whereof the above-named parties of the first
1098 part have hereunto set their hands and seals this the date above written.

CORRYDON GARRETT. [SEAL.]
SARAH GARRETT. [SEAL.]

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

I, Asa Iglehart, judge of the court of common pleas of Vanderburgh county, Indiana, do certify that this instrument of writing from Corydon Garrett and Sarah Garrett, wife of the said Corydon Garrett, was this day produced to me by the parties and acknowledged by them to be their voluntary act and deed, and that the contents and effects of the within deed or instrument being explained to the said Sarah Garrett by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same be recorded.

Given under my hand and seal of office this the 14th day of December, A. D. 1854.

ASA IGLEHART, [SEAL.]
J. C. C., V. C.

1099 STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Jacob Lunkenheimer, clerk of the court of common pleas of Vanderburgh county, do hereby certify that the now [Hon.] Asa Iglehart is the sole judge of the court of common pleas for the district composed of the counties of Vanderburgh and Warrick, in the State of Indiana, duly elected and qualified and authorized by law to take the acknowledgment of deeds and other instruments of writing, and that full faith and credit are due and ought to be given to all his official acts as such judge, and that his signature to the within certificate is genuine.

In witness whereof I hereunto sign my name & affix the seal of said court, at Evansville, this the 14th day of December, 1854.

JACOB LUNKENHEIMER,
Clk C. C. P., V. C.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that the deed from Corydon Garrett and Sarah Garrett, his wife, to Wildo Stansberry and the foregoing
1100 certificates of acknowledgment and authentication thereof, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 5th day of May, 1855.

WILL. D. ALLISON, *C. H. C. C.*

No. 44.

This indenture, made and entered into this 8th day of February, 1858, between Wm. H. Philips, of the county of Vanderburgh and State of Indiana, of the first part, and Lemuel Stansbury, of Henderson county, State of Kentucky, of the second part, witnesseth: That the said Wm. H. Philips, for and in consideration of the sum of four hundred dollars, the receipt of which is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey, unto the said Lemuel Stansbury all his right, interest, and title (the same being one-fourth) in and to a certain tract of land, undivided, lying and being in the county of Henderson, on Green River Island, being the same tract conveyed by Levi Jones to Austin Philips by deed recorded in the clerk's office of the Henderson county court, in Deed Book J., p., 225, and bounded as follows, to wit: Beginning at the lower corner of a tract of 100 acres, conveyed by Levi Jones to John Garrett by deed bearing date the 20th day of October, 1841, on the bank of the Ohio river,
1101 and running from thence along said Garrett's line to a bayou at said Garret's corner; thence down along the bank of said bayou to a point from whence, by a line drawn parallel with said Garret's lower line to the river and from thence to the place of beginning, will include said sixty acres of land, the undivided interest

of one-fourth of which descended to the said Wm. H. Philips from his father, Austin Philips, deceased; to have and to hold the said undivided interest in the land above described unto him, the said Lemuel Stansberry, his heirs and assigns, free from the claim or claims of all persons claiming by, through, or under him, the said Wm. H. Phillips, and against the claim or claims of no other person whomsoever.

In testimony whereof the said Wm. H. Phillips has hereunto set his hand the date above written.

WM. H. PHILIPS. [SEAL.]

STATE OF INDIANA, } ss:
Vanderburgh County, }

Before me, B. M. Stinson, a justice of the peace within and for the county of Vanderburgh, State of Indiana, personally appeared Wm. H. Phillips, to me personally and well known, and acknowledged the signing and sealing of the foregoing instrument to be his voluntary act and deed.

1102 In testimony of which I have hereto set my hand and affixed my official seal, at Evansville, this 25th day of January, A. D. 1860.

BEN. STINSON. [SEAL.]

Attest:

BEN. STINSON.
L. J. STINSON.

STATE OF INDIANA, } sct:
Vanderburgh County, }

I, Louis Ruther, clerk of the Vanderburgh circuit court within and for said county, do hereby certify that Ben. Stinson, Esq., before whom the attached deed of the same, to wit, on the 28th day of January, A. D. 1860, — and still is an acting justice of the peace within and for said county of Vanderburgh, and that full — and credit are due to all his official acts as such. I further certify that his signature to said certificate is genuine.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Evansville, in said county, this 28th day of January, 1860.

LOUIS RUTHER, *Clerk.*

1103 STATE OF KENTUCKY, } sct:
Henderson County, }

I, Young E. Allison, clerk of the county court for the county aforesaid, do certify that this deed from Wm. H. Philips to Lemuel Stanbury was this day received in my office, and the same, together with the certificates thereon endorsed authenticating the same and this certificate, are all truly recorded in my office.

Witness my hand this 2nd day of April, 1860.

Y. E. ALLISON, *C. H. C. C.*

No. 45.

This indenture, made and entered into this 15th day of March, 1859, between Louis N. Philips, of Vanderburgh county, Indiana, and Lemuel Stansberry, of Kentucky, witnesseth: That the said Lewis N. Philips, for and in consideration of the sum of four hundred and fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and confirm, unto the said Lemuel Stansbury and his heirs and assigns forever all his right, title, and interest (being one undivided fourth part) of, in, and to a certain tract of land lying and being in the county
1104 of Henderson, in said State of Kentucky, on Green River Island, being the said tract of land conveyed by Levi Jones to Austin Phillips, by a deed recorded in the clerk's office of the Henderson county court in Deed Book "I," page 325 or 225, and bounded as follows, to wit: Beginning at the lower corner of a tract of 100 acres conveyed by Levi Jones to John Garret by deed bearing date the 26th day of October, 1841, on the bank of the Ohio river, and running from thence along said Garett's corner, thence down along the bank of said bayou to a point from whence, by a line drawn parallel with said Garret's lower line to the Ohio river and from thence to the place of beginning, will include sixty acres (60) of land, the undivided one-fourth of which said tract of land, being the interest therein hereby conveyed, descended to the said Lewis N. Phillips from his father, the said Austin Philips, deceased; to have and to hold the said undivided one-fourth part of the tract of land aforesaid unto the said Lemuel Stansbury and his heirs and assigns forever; and the said Lewis N. Phillips, for himself and his heirs, executors, & administrators, the aforesaid undivided one-fourth part of said tract of land, with the appurtenances, unto the said Lemuel Stansbury and his heirs and assigns, against the claim of the said Lewis N. Philips and all persons claiming by, from, through, or under him and against the claim or claims of all other per-
1105 sons whomsoever, do and will warrant and forever defend.

Witness my hand and seal this the day and year herein first before written.

LEWIS N. PHILIPS. [SEAL.]

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

Before me, J. W. B. Moore, judge of the court of common pleas of said county of Vanderburgh, this the 15th day of March, 1859, personally came the above-named Lewis N. Philips in open court and acknowledged the foregoing indenture to be his voluntary act and deed.

In witness whereof I have hereunto set my hand and caused the clerk of said court to affix the seal of said court this the seventh day of the March term, 1859, of said court.

[L. S.] JOEL W. B. MOORE.

Attest:

LOUIS RICHTER, *Clk.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Louis N. Phil-
1106 ips to Lemuel Stansbury, together with the foregoing certificate of acknowledgement thereof and also this certificate, were all this day truly recorded in my office.

Witness my hand this 28th day of July, A. D. 1859.

WILL. D. ALLISON, *C. H. C. C.*

No. 46.

Whereas Jackson McClain, Ann Matthews, and John H. Matthews are the owners of a tract of land on Green River Island, Henderson county, Kentucky, containing 305 acres, in which the said Jackson McClain has an interest, undivided of, and heretofore the parties did agree to a division according to their respective interests, made by D. N. Walden and Harbison Butler, in which division there was allotted to the said Jackson McClain a tract of land called in the division lot No. 1, bounded as follows: Beginning at two maples and cotton-wood on the river bank, running thence N. 22° E. 293 poles to a hickory stump, corner to the Slaughter survey (now McClain's), on the bank of the island chute; thence down the said chute N. 55° W. 68 poles to 2 sycamores on the bank thereof; thence S. 25° W. 293 poles to 4 cotton-woods on the bank of the Ohio river; thence up the river, as it meanders, S. 55 E. 68 poles to the beginning, containing 130 acres: Now, for the purpose of carrying out said division and conveying to each party the portion allotted thereby,
1107 and in consideration of one dollar in hand paid, the said John H. Matthews and Ann Matthews hereby release and convey to the said Jackson McClain the one hundred and thirty acres of ground above described, with its appurtenances; to have and to hold to him, his heirs or assigns forever, with covenant of special warranty—that is, free from the claim or claims of all persons claiming by, through, or under them, the said John H. Matthews and Ann Matthews, or their heirs.

Witness the hands and seals of said grantors this 13th day of September, A. D. 1860.

J. H. MATTHEWS. [SEAL.]
CAROLINE N. MATTHEWS. [SEAL.]
MARY A. MATTHEWS. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Young E. Allison, clerk of the Henderson county court aforesaid, do certify that this deed from John H. Matthews and wife & Ann Matthews to Jackson McClain was acknowledged before me, in my said county, on the 13th day of September, 1860, by the said John H. and wife and Ann Matthews to be their act and deed; and

thereupon the same, together with this certificate, was truly recorded in this office.

Y. E. ALLISON, *Clk*,
By WILL. B. BUTLER, *D. Clk.*

1108 No. 47.

Whereas in the action of John H. Mathews, adm'r, plaintiff, against John H. Mathews' heirs, defendant, pending in the Henderson court of common pleas, an order was entered at the December term, 1876, directing H. H. Shouse, the master commissioner of said court, to expose for sale, at public auction, to the highest and best bidder, the property hereinafter described; and whereas said property was sold in accordance with said order on the 5th day of February, 1877, for the sum of three hundred & forty-nine dollars and — cents, when — became the purchaser thereof; and whereas the report of said sale was confirmed by said court at the April term, 1877, and at the April term, 1877, an order was entered directing H. H. Shouse, master commissioner, to execute a deed of conveyance of said property to said Wm. P. McClain, but for greater certainty the record and proceedings in said case are referred to: Now, therefore, this indenture, made and entered into this 19 day of April, 1877, by and between H. H. Shouse, master commissioner of the said court, of the first part, and —, of the second part, witnesseth:

1109 That, for and in consideration of the premises and by virtue of the power by law vested in him the party of the first part, H. H. Shouse, as master commissioner aforesaid, has sold, and by this writing does convey, to said party of the second part and his heirs and assigns forever the following-described property, to wit: A tract of land, being the same sold by title bond dated May 12th, 1860, by Wm. McClain to John H. Mathews, containing 26½ acres, and is bounded as follows: Beginning at 4 cotton-woods on the bank of the Ohio river, corner to Jackson, 130 —; thence with his line N. 22½° E. 170½ — to a pawpaw, elm, hackberry, and box elder, corner to lot No. 2, or Ann Matthews, now Yates; thence with her line N. 68° W. 24¾ poles to a stake just beyond and near a maple & pecan; thence S. 22½° W. 169 poles to a stake on the bank of the Ohio river, below 2 cotton-woods; thence up the Ohio river, as it meanders, S. 47° E. 25½ poles to the beginning—said land is situated on Green River Island, in the county of Henderson and State of Kentucky—with such covenant of warranty as he is authorized by the judgment, orders, and proceedings in said cause to make, and no further; but he does not bind himself personallyb y anything contained herein, in any event whatever.

1110 In testimony whereof said H. H. Shouse, as master commissioner aforesaid, has hereunto subscribed his name this 19th day of April, 1877.

H. H. SHOUSE,
Master Commissioner, H. C. C.

Acknowledged by the commissioner, examined, and found correct
63–o

and approved in open court, and ordered to be certified for record this 23rd day of April, 1877.

C. BENNETT,
Judge H. C. C.

STATE OF KENTUCKY, *sct:*

Henderson Court of Common Pleas.

I, David Banks, clerk of the Henderson court of common pleas, do hereby certify that this deed from Haydon H. Shouse, master commissioner of said court, to Wm. P. McClain was, on the 23d day of April, 1877, presented in open court by said Shouse, as such commissioner, and was by him duly acknowledged to be his act and deed; and the said deed, having been examined by the court, was approved and confirmed, and so indorsed by the judge and ordered to be transmitted, duly certified, to the clerk of the Henderson county court for record, which is now done accordingly.

Given under my hand this 30th day of April, 1877.

Attest: DAVID BANKS, JR., *Clerk.*

1111 STATE OF KENTUCKY, }
County of Henderson, } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do hereby certify that the foregoing deed from Haydon H. Shouse, master commissioner of the Henderson court of common pleas, to Wm. P. McClain was produced to me, in my office, on the 8th day of May, 1877, certified as above, for record. Whereupon the same and the foregoing and this certificate have been duly recorded in my office.

Given under my hand this 8th day of May 1877.

Attest: GEO. W. SMITH, *Clerk,*
By ALEX. M. BURCH, *D. C.*

No. 48.

Whereas heretofore, to wit, at a circuit court held for Henderson county, in the State of Kentucky, on the first day of July, 1857, a decree was pronounced in the case depending in said court between R. B. Atkinson, adm'r, plaintiff, and R. B. Atkinson's heirs and creditors, defendants, directing, among other things, that certain portion of the land mentioned in the pleadings be divided into tracts of not less than fifty acres, and that all the land mentioned in the pleadings be sold at public auction, &c., and that each tract
1112 be sold separately, and directing that George A. Sugg be appointed a commissioner to carry said decree into effect; and whereas said commissioner, having pursued the direction of said decree in all respects as required by law, did, at the court-house door, in the city of Henderson, on Monday, the 27th day of July, 1857, offer for sale, at public auction or outcry, a tract of land mentioned in the pleadings and exhibits, lying on Green River Island, in the county of Henderson, being lot No. 1 of the division made in pursuance of the decree aforesaid, and bounded as follows, to wit:

Beginning at 4 cotton-woods and 2 maples on the river & running N. 1° E. 168 poles to a stake; thence 78 W. and 160 poles to 3 cotton-woods on the river; thence up the same to the beginning, containing one hundred acres; also another tract of land lying on said Green River Island, being lot No. 2 of the division aforesaid, and bounded as follows: Beginning at 3 cotton-woods on the river & runs with lot No. 1 S. 78 E. 160 poles to a stake; thence N. 1° E. 188 poles to a large elm, original corner, on the bayou; thence S. 49° 30′ W. 218 poles to the beginning, containing eighty-nine acres; also another tract of land lying on said Green River Island, in said county, being lot No. 3 of the division made as aforesaid, and bounded as follows, to wit: Beginning at a large elm on the bayou & runs with lot No. 2 S. 47° 30′ W. 218
1113 poles to 3 cotton-woods on the river; thence down the same N. 21 W. 78 poles, N. 8° W. 136 poles to 4 maples; thence S. 78 E. 220 to the beginning, containing one hundred and twenty-six & one-quarter acres; also another tract of land lying on said Green River Island, being lot No. 4 of the division aforesaid, and bounded as follows, to wit: Beginning at a large elm on the bayou & running down said bayou N. 40 W. 220 poles to a hackberry, elm, & box elder, thence S. 51 W. 96 poles to a stake on the river; thence S. along the bank, running up the river 56 poles to 4 maples, corner to lot No. 3, also on the river; thence with a line of the same S. 78 E. 220 poles to the beginning, containing one hundred and ten and three-quarters —; also two certain lots or parcels of ground adjoining the city of Henderson, and bounded as follows, to wit: Beginning at a stake in the line of Mill street when extended through the ten acre lots into Alve's old meadow, being numbers 53 & 56, and each one hundred feet front, running back two hundred feet to an alley 17 feet 5 inches wide. And George Atkinson, being at said sale the highest and best bidder, became the purchaser of said several tracts of land and town lots at the following prices: The first two tracts of land herein mentioned, at the price and sum of sixteen dol-
1114 lars per acre, amounting to $3,024.06; the third tract of land herein mentioned (lot No. 3), at the price and sum of nineteen dollars per acre, amounting to $2,398.75; the fourth tract of land herein mentioned (lot No. 4), at the price and sum of twenty-two dollars and 50 cents per acre, amounting to $2,491.87½ cents; the two town lots hereinbefore mentioned, at the price and sum of two hundred & eighty dollars, the whole purchase-money amounting to $8,194.62½; and the said George Atkinson, with his surety, executed bond, in accordance with said decree, due & payable in six, eighteen, & twenty-four months, with interest from the day of sale; all of which will more fully and at large appear by reference to the pleadings, exhibits, decrees, and reports on file in said cause. And whereas the said George A. Sugg has, by an order or decree in said cause, been appointed commissioner to convey the lands sold as aforesaid to the several purchasers by deed, with covenant of warranty: Now, in consideration of the premises, the said George A. Sugg, as such commissioner, has sold and hereby conveys unto the said George Atkinson the said four tracts of land and two town lots above described;

to have and to hold the said land and town lots, with all the appurtenances thereto belonging, unto him, the said Atkinson, his heirs or assigns, forever, with covenant of special warranty—that is, with all such right, title, and covenant of warranty as the said commis-
1115 sioner has authority under the several orders & decrees in such cause to convey & warrant, but no further; and said commissioner is in no event to be personally responsible for anything in this deed contained.

In witness whereof the said Geo. A. Sugg, as such commissioner, has hereto set his hand & seal this 18th day of June, A. D. 1860.

G. A. SUGG, *Com'r.*

Acknowledged, examined, approved, and ordered to be certified for record June 18, 1860.

JOHN P. COOK.

I, T. I. Hopkins, clerk of the circuit court of the county of Henderson, in the State of Kentucky, do certify that at a circuit court held for said county, at the court-house *house*, in the city of Henderson, on the 18th day of June, 1860, this deed from G. A. Sugg, commissioner, to George Atkinson, was acknowledged in open court to be his act and deed, and the same, being examined, was approved of by the court and ordered to be certified for record, which is done.

Witness my hand this 5th day of April, 1861.

T. J. HOPKINS, *C. H. C. C.*

1116 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Young E. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from George A. Slugg, commissioner, to George Atkinson was this day received into my office, and the same, together with this certificate of the clerk of the Henderson circuit court thereon endorsed, authenticating the same, and this certificate, were all duly admitted to record.

Witness my hand this 5th day of April, 1861.

Y. E. ALLISON, *C. H. C. C.*

No. 49.

Henry Angel and Nancy C. Angel, his wife, of Henderson county, in the State of Kentucky, convey and warrant to Lemuel Stansberry, of Henderson county, in the State of Kentucky, for the sum of four hundred & twenty-five dollars, the following real estate in Henderson county, in the State of Kentucky, to wit: Beginning at the lower corner of a tract of 100 acres conveyed by Levi Jones to John Garrett by deed dated October 26th, 1841, on the bank of the Ohio river, and running from thence along said Garrett's lower line to a bayou at said Garrett's corner; thence down along the
1117 bank of said bayou to a point from whence, by a line drawn parallel with said Garrett's lower line to the Ohio river and

from thence to the place of beginning, will include sixty (60) acres of land; the undivided one-fourth of which said tract of land hereby conveyed descended to the said Nancy C. Anglel, formerly Nancy C. Philips, from her father, the late Austin Philips, deceased, together with all the appurtenances thereunto belonging or in anywise appertaining; to have and to hold the same to his own proper use, benefit, and behoof forever, it being the same tract of land conveyed by deed from Levi Jones to said Austin Philips, recorded in the clerk's office of the Henderson county court.

In witness whereof the said Henry Angel and Nancy C. Angel, his wife, have hereto set their hands and seals this 8th day of June, 1861.

HENRY ANGEL.
NANCY C. ANGEL.

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

Before me, James T. Walker, a justice of the peace in and for said county, this 8th day of June, 1861, personally came Henry Angel and Nancy C. Angel, his wife, and acknowledged the execution of the annexed deed.

1118 Witness my hand and seal.

JAMES T. WALKER, [SEAL.]
Justice of the Peace.

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

I, Louis Richter, clerk of the Vanderburgh circuit court in and for the county aforesaid and State above named, do hereby certify that James T. Walker, Esq., before whom the foregoing acknowledgment was made, and whose genuine signature appears thereto, was at the date of the same, to wit, on the 8th day of June, 1861, an acting justice of the peace in and for the county aforesaid, duly authorized by law to take acknowledgments, and that all his official acts as such are entitled to full faith and credit.

In attestation whereof I hereunto sign my name and affix my official seal, at Evansville, this 25th day of March, A. D. 1862.

LOUIS RICHTER,
Clerk V. C. C.

I, Young E. Allison, clerk of the county court of Henderson county, in the State of Kentucky, do certify that this deed from Henry Angel & wife to Lemuel Stansberry was received into my office on the 28th day of May, 1863, and the same, together
1119 with this certificate, are all truly recorded in my office.

Witness my hand this 9th June, 1863.

Y. E. ALLISON, *C. H. C. C.*

No. 50.

This indenture, made this fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-four, be-

tween Henry Angel & Nancy C. Angel, his wife, of the first part, and Lemuel Stansberry, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seven hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, & sold — by these presents do grant, bargain, sell, convey, & confirm, unto the said party of the second part, his heirs & assigns, forever the following-described real estate, in Henderson county & State of Kentucky, to wit., the undivided one-fourth part of the tract of land lying on Green River Island, in said county & State, & bounded as follows, to wit: Beginning at the lower corner of a tract of one hundred acres of land conveyed to [by] Levi Jones to John Garrett by deed dated in October (1844), on the bank of the Ohio river, and running from thence along said Garrett's lower line to a bayou at Garrett's corner; thence down along the bank of
1120 said bayou to a point from thence by a line drawn parallel with said Garrett's lower line to the Ohio river; thence to the place of beginning, being the undivided tract belonging to the heirs of Austin Phillips, the land herein conveyed being the undivided one-fourth of the above-described real estate, which was conveyed — Henry Angel by Elizabeth Philips, one of the four heirs of Austin Philips, deceased, together with all & singular the appurtenances thereunto belonging or in anywise appertaining, & also all of the estate, right, & title of the said parties of the first part of, & [in], or to the same; to have and to hold the land & premises hereby conveyed & interest therein above described, with the appurtenances aforesaid, unto the said parties of the second part, his heirs & assigns, forever; & the said parties of the first part, for themselves & their heirs, executors, and administrators, the aforesaid tract of land & premises, with the appurtenances aforesaid, unto the said party of the second part, heirs and assigns, against the claim of the party of the first part and all persons claiming by, from, through, or under them & all persons whomsoever do & will forever warrant & defend by these presents.

In testimony whereof the said parties of the first part have hereunto set their hands & seals this the date above written.

HENRY ANGEL. [SEAL.]
NANCY C. ANGEL. [SEAL.]

1121 STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Blythe Hines, clerk of the Vanderburgh circuit court, do hereby certify that on this day the within instrument from Henry Angel & Nancy C., his wife, to Lemuel Stansberry was produced to me by the parties and acknowledged by the said Henry Angel and wife to be their voluntary act & deed; and the said Nancy Angel being by me examined separate & apart from her said husband and the contents & effects of said instruments explained & fully made known to her, whereupon she declared that she executed the same of her own free will & accord & acknowledged the same to be her act & deed, & consented that the same might be recorded.

Witness my hand & seal of said —, at Evansville, Indiana, this 10th day of November, 1865.

BLYTHE HYNES, *Clerk*,
[SEAL.] P'r H. W. BIPPUS, *Deputy*.

STATE OF INDIANA, } ss:
Vanderburgh County, }

I, Charles Denby, a notary public in & for said county, do hereby certify that on the 14th day of December, A. D. 1864, the
1122 within-named Henry Angel and Nancy C. Angel, his wife, personally appeared before me & acknowledged the execution of the within deed.

Witness my hand & official seal, at said county, this the date above written.

CHARLES DENBY,
Notary Public.

STATE OF KENTUCKY, } sct:
Henderson County, }

I, Young E. Allison, clerk of the county court aforesaid, do certify that this deed from Henry Angel & wife to Samuel Stansberry was received into my office on the 17th day of July, 1866, &, being stamped according to law, is, with the certificate of Blythe Hynes, clerk of Vanderburgh circuit court, in the State of Indiana, therein endorsed, & this certificate duly recorded.

Y. E. ALLISON, *C. H. C. C.*

No. 51.

This indenture witnesseth: That heretofore, to wit, on the 22d day of November, A. D. 1864, David Elkins, as executor of Joseph Elkins, deceased, under and by virtue of the will of said Josiah and his powers as executor, sold a certain tract of land mentioned in said will, and Elemut Stansberry, being the highest bidder therefor, became
1123 the purchaser of said land at the price and sum of four thousand two hundred ($4,200) dollars, which sum has long since been paid: Now, in consideration of the premises, the said sale and payment of said purchase-money, the said David Elkins, as executor aforesaid, hath sold and doth hereby convey to said Elemutt the said tract of land, which is now more particularly described as follows: A tract of land lying in the county of Henderson, State of Kentucky, on "Green River Island," beginning on the bank of the Ohio river eighty-eight links southwardly from a black walnut tree and running down the Ohio River S. 89° west twelve chains and (25) twenty-five links; thence N. 8° 30 E. thirty-seven chains to near the middle of the bayou; thence S. 68° 30′ E. thirteen chains and twelve links; thence S. 9 and 30′ W. thirty-two chains seventy-five links to the beginning, containing ($44\frac{21}{100}$, forty-four $\frac{21}{100}$ acres; to have and to hold the said tract of land unto him, the said Elemutt Stransberry, his heirs or assigns, forever; and the said David Elkins, as such executor, hereby covenants that the heirs and devisees of

said Josiah Elkins, deceased, shall and will warrant the title to said land so far as by law and the power vested in him as executor by said will he has power to convey and warrant; and in con-
1124 sideration of the premises, and for the further consideration that Farpley Taylor Heggenbottom and his wife, Ebe Sam. Heggenbottom (formerly Elkins), heirs and devisees of said Josiah Elkins, deceased, have received their portion of the purchase-money of the said tract of land, and for the further consideration of one dollar in hand paid, they, the said Farpley Taylor Heggenbottom and Ebe Jane, his wife, do hereby sell, alien, and convey unto the said Elemutt Stransberry all their right, title, and interest in and to the above-described tract of land, and do hereby covenant to warrant the title to the same against the claim or claims of all persons claiming by, through, or under them or either of them or the heirs of either of them.

In witness whereof the said David Elkins, ex'or of Josiah Elkins, deceased, and Farpley Taylor Heggenbottom, Ebe Jane, his wife, thereto set their hands and seals this 12th day of April, A. D. 1867.

Attest:

DAVID ELKINS. [SEAL.]
FARPLEY TAYLOR HEGGENBOTTOM. [SEAL.]
EBE JANE HEGGENBOTTOM. [SEAL.]

A. G. DENNIS.

1125 STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Azro Dyer, a commissioner of deeds for the State of Kentucky, duly appointed and commissioned by the Governor thereof, for the State of Indiana, do hereby certify that this instrument of writing from David Elkin, executor of Josiah Elkins, deceased, and Farpley Taylor Heggenbottom and Ebe Jane Heggenbottom *and* (Ebe Jane Elkins), his wife, to Elemutt Stransberry, was this day produced to me by the parties and acknowledged by the said David Elkins, ex'or, as aforesaid, and Farpley Taylor Heggenbottom and Ebe Jane Heggenbottom, his wife, to be their voluntary act and deed; and the contents & effect of the instrument being explained to the said Ebe Jane Heggenbottom, wife of said Farpley Taylor Heggenbottom, by me, separately and apart from her said husband, she thereupon declared that she did freely and voluntarily execute & deliver the same as her act & deed, and consented that the same might be recorded.

In testimony whereof I have hereto set my hand and affixed my official seal this 12th day of April, A. D. 1867.

[L. S.] AZRO DYER,
Commissioner.

1126 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, James P. Breckinridge, clerk of the county court of Henderson county *court*, do certify that this deed from David Elkins, ex'or, *et al.*

to Elemut Stransberry was received into my office on the 19th day of April, 1867, together with the certificate of acknowledgment thereof, from the commissioner of Kentucky, resident of Vanderburgh county, State of Indiana, — were all this day truly recorded in my office, first being duly stamped as required by law.

Witness my hand, as clerk of said court, this 10th day of July, 1867.

JAMES P. BRECKINRIDGE, *C. H. C. C.*

No. 52.

This indenture, made this 23rd day of January, 1865, between Young E. Allison, commissioner appointed by a decree of the Henderson circuit court in the case of Corydon Garrett against William Yates' heirs, of the first part, and George Wilding Yates, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand and six dollars and 21 cents, having pursued the directions of said decree in all re-
1127 spects in the sale of the land therein mentioned, and the said George Wilding Yates, being at said sale the highest and best bidder and having become the purchaser of the whole of the tract of land in the pleadings mentioned, about 82 acres, at the price of one thousand and six dollars and 21 cents, and secured the same, as in the commissioner's report in said case mentioned, he does by these presents bargain, sell, and convey to the said George Wilding Yates the said tract of land in the pleadings and title bond mentioned, which lies in Henderson county, on Green River Island, and embraces all the land which lies above Wilda Stansberry's tract, bought of said Corydon Garrett, and the land of the island, containing about 82 acres, more or less; to have and to hold the said tract of land to him, the said George Wilding Yates, his heirs or assigns, free from the claim or claims of any and all the heirs of the said William Yates and the said Corydon Garrett, and all persons claiming by, through, or under them or either of them, with special warranty.

Witness the hand and seal of the said Young E. Allison, commissioner as aforesaid, the date first above written.

Y. E. ALLISON, *Com'r.*

Acknowledged, examined, approved, and ordered to be certified for record March 11th, 1872.

BEN. P. CISSELL, *Judge.*

1128 I, Adam Rankin, clerk of the circuit court of Henderson county, in the State of Kentucky, do certify that at a circuit court held for said county on the 11th day of March, 1872, this deed from Y. E. Allison, commissioner, to George Wilding Yates was acknowledged in open court by the said Allison, as such commissioner, to be his act and deed, and the same, having been examined by the court, was approved of and ordered to be certified for record, which is here done accordingly.

Witness my hand this 11th day of March, 1872.

ADAM RANKIN, *C. H. C. C.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, F. E. Walker, clerk of the Henderson county court, certify that this deed from Com'r Y. E. Allison to Geo. W. Yates, being stamped with a one-dollar "U. S." revenue stamp, is, with the foregoing certificate of the clerk of the Henderson circuit court and this certificate, truly recorded in my office.

Witness my hand this the 12th day of March, 1872.

T. E. WALKER, *C. H. C. C.*,
By JOHN ADAMS, *D. C.*

1129 No. 53.

This indenture, made this 18th day of January, in the year of our Lord 1865, between Thomas Hampton & Elenor Hampton, of Vanderburgh county, Indiana, of the first part, & George W. Yates, of Henderson county, State of Kentucky, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred & forty-five dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, & sold, — by these presents do grant, bargain, sell, convey, & confirm, unto the said party of the second part, his heirs and assigns, forever the undivided one-eighth part of the following-described real estate lying on Green River Island, Henderson county, Kentucky, & described as follows, to wit: Beginning at a cotton-wood tree on Wilda Stransberry-' upper corner, running with said Stransburry land north 6 east to the Indiana State line, on north side of said Green River Island; thence up the bayou with the Indiana State line to the head of said island; thence round and with the head of said island to the main river, Ohio, & thence down the same to the place of beginning, the same being 100 acres, more or less; also the undivided one-eighth of the present property of William & Sarah L. Yates, deceased, late
1130 of Henderson county, State of Kentucky, together with all & singular the appurtenances thereunto belonging or in anywise appertaining, & also all the estate, right, & title of the said parties of the first part of, in, or to the same; to have & to hold the land & premises hereby conveyed & interest therein above described, with the appurtenances aforesaid, unto the said party of the second part, heirs & assigns, forever; and the said Thomas Hampton & Elnor Hampton, for themselves, heirs, executors & admini-trators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part, heirs and assigns, forever, against the claim of the parties of the first part & all persons claiming by, from, through, or under them & all other person or persons whomsoever, do & will forever warrant and defend by these presents.

Witness our hands & seals the day and date above written.

THOMAS HAMPTON. [SEAL.]
ELANOR E. HAMPTON. [SEAL.]

STATE OF INDIANA, *Vanderburgh County,* } *sct:*

I, Blythe Hynes, clerk of the Vanderburgh circuit court, do hereby certify that on this day the within-named instrument was produced to me by the parties & acknowledged by the said Thomas
1131 Hampton & Elenor, his wife, to be their act and deed for the uses — purposes therein mentioned, and consented that the same might be recorded, & the contents & effects of said instrument being by me made known to the said Elenor Hampton, whereupon she acknowledged that she executed the same of her own free will without fear or compulsion from her said husband, & consented the same might be recorded.

[Seal of the Vanderburgh Circuit Court] Witness my hand & seal of said court, at Evansville, Indiana, this 18th day of January, 1865.

BLYTHE HYNES, *Clerk,*
P'r H. W. BIPPUS, *Deputy.*

I, Young E. Allison, clerk of the county court of Henderson county, in the State of Kentucky, do certify that this deed from Thomas Hampton & wife to George Wilding Yates was received into my office on the 9th day of March, 1800, and, the same being stamped according to law, is, with the certificate of Blythe Hynes, clerk of the circuit court of Vanderburgh county, in the State of Indiana, authenticating the same, & this certificate, *were* all duly recorded.

Y. E. ALLISON, *C. H. C. C.*

1132 No. 54.

This indenture, made and entered — this — day of ——, in the year of ur Lord 1865, between William Yates and Martha E. Yates, of Henderson county, Kentucky; Thomas D. Yates and Mary A. Yates, his wife; Thomas J. Jordan and Sarah, his wife (late Yates), of the first part, and George Wilding Yates, of Henderson county, Kentucky, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ninety-four $\frac{43}{100}$, each, dollars & current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, & by these presents do grant, bargain, sell, convey, & confirm, unto the said party of the second part, *their* heirs & assigns, forever the undivided one-eighth part of the following-described real estate, lying on Green River Island, Henderson county, Kentucky, and described as follows, to wit: Beginning at a cottonwood on Wilda Stanberry's upper corner, running with said Stanberry's line north 6 east to the Indiana State line, on the north side of said Green River Island; thence up the bayou with the Indiana State line to the head of said island; thence round and with the head of said island to the main river, Ohio, & thence down the same to the place of beginning, the same being one hundred acres, more

or less; also the undivided one-eighth part of the personal
1133 property that they had in possession in the State of Kentucky of William and Sarah L. Yates, deceased, late of Henderson county, Kentucky; together with all & singular the appurtenances thereunto belonging or in anywise appertaining, and also all of the estate, right, & title of the said parties of the first part of, in, or to the same; to have and to hold the land & premises hereby conveyed & interest therein above described, with the appurtenances aforesaid, unto the said party of the second part, *their* heirs and assigns, forever; and the said William Yates and Martha Yates, for themselves, heirs, executors, & administrators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part, heirs & assigns, against the claim of the — first part & all persons claiming by, from, through, or under them & and all other person or persons whomsoever, do & will forever warrant & forever defend by these presents.

Witness our hands & seals the day & date above written.

WILLIAM YATES.
MARTHA E. YATES.
THOMAS J. JORDAN.
(50-cent stamp.) SARAH L. JORDAN.
THOMAS D. YATES.
MARY A. YATES.
JAMES DENT YATES.

I, Young E. Allison, clerk of the county court of Hender-
1134 son county, in the State of Kentucky, do certify that this deed from William Yates and wife & others to George Wilding Yates was acknowledged before me, in said county, on the 7th day of October, 1865, by Thomas J. Jordan and Sarah L. Jordan, his wife; on the 16th by William Yates & Martha E. Yates, Thomas D. Yates & Mary A. Yates, his wife, & on the 9th day of March, 1866, by James Dent Yates, to be their acts & deed, &, being stamped according to law, is, with certificate, duly recorded.

Y. E. ALLISON, *C. H. C. C.*

No. 55.

This indenture, made this thirteenth day of March, one thousand eight hundred and sixty-eight, between David Elkins and Elizabeth Elkins, his wife, of Vanderburgh county and State of Indiana, of the first part, and Wilda Stansbury, of Green River Island, in Henderson county, Kentucky, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four thousand four hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part and his heirs and assigns forever the following-described tract or piece of land, to wit: Beginning on the bank of the Ohio river,

on Green River Island, in Henderson county, Kentucky, at
1135 a stake, running thence N. 6° 50′ east thirty-one chains and fifty links to about the middle of the bayou; thence north 87° west down said bayou sixteen chains and seventy-five links; thence south 9° 30′ west 32 chains & 75 links to the bank of the river (88 links from a black walnut tree in said line); thence south 86° east eighteen chains and ninety-four links to the place of beginning, containing fifty-seven acres and thirty-hundredths of an acre on said island in Henderson county, Kentucky, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, and title of said parties of the first part of, in, and to the same; to have and to hold the land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns, against the claims of the parties of the first part and all persons claiming by, from, through, or under them or either of them, and against the lawful claims of all other persons whom-
1136 soever, do and will warrant and forever defend by these presents.

In testimony whereof the above-named parties of the first part have hereunto set their hands and seals this the date above written.

DAVID ELKINS. [SEAL.]

her
ELIZABETH x ELKINS. [SEAL.]
mark.

Attest: AZRO DYER.

STATE OF INDIANA, }
Vanderburgh County, } *ss:*

I, Azro Dyer, commissioner of deeds for the State of Kentucky, duly appointed and commissioned by the Governor thereof for the State of Indiana, and authorized to take the acknowledgement of deeds and other writings, do certify that this deed from David Elkins and Elizabeth Elkins, his wife, was this day produced to me in the county aforesaid by the parties, which deed was acknowledged by the said David Elkins to be his act and deed, and the contents and effects of the instrument being explained to the said Elizabeth Elkins by me separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed and consented that the same might be recorded.

Given under my hand and seal of office this 21st day of December, 1868.

AZRO DYER,
Commissioner.

1137 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Francis E. Walker, clerk of the Henderson county court, do certify that this deed from David Elkins and wife to Wilda Stansbury was received into my office on the 11th day of March, 1869, together with the certificate of the acknowledgement thereof from the commissioner of deeds for the State of Kentucky, in the State of Indiana, and, being duly stamped, is, with this certificate, truly recorded in my office.

Witness my hand this the 11th day of March, 1869.

FRANCIS E. WALKER, *C. H. C. C.*

No. 56.

This indenture, made and entered into this fourteenth day of March, 1868, between Elizabeth W. Phillips, of the first part, and Henry Angel, of the second part, all of the county of Henderson, in the State of Kentucky, witnesseth: That the said Elizabeth W. Philips, for and in consideration of the sum of two hundred dollars, to her paid in hand, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said Henry Angel, his heirs and assigns, forever the following tract or parcel of land, lying in and being in
the county of Henderson and State of Kentucky, on the first
1138 large island in the Ohio river below the mouth of Green river, containing one hundred acres, and being a part of the tract of land conveyed to Eggleston Matthews by Nancy Terry and others by deed, recorded in the clerk's office of the Henderson county court, bearing date the 31st day of January, 1831, which said one hundred acres of land is bounded as follows, to wit: Beginning at a small box elder and two elms on the bank of the bayou, on the north side of the island, and running south 50° east up and with the bayou 141 poles to a walnut, hickory, and hackberry on the bank of the bayou, thence south 40° west 114 poles to two box elders; thence north 50° west 141 poles to two box elders and a cotton-wood; thence north 40° east 114 poles to the beginning; to have and to hold the said tract of land hereby conveyed, with all and singular the appurtenances thereunto belonging or in anywise appertaining, to the said Elizabeth W. Phillips, her heirs and assigns, forever; and the said Elizabeth W. Philips hereby covenants and agrees that she will forever warrant and defend the title so conveyed of the aforesaid one hundred acres of land unto him, the said Henry Angel, his heirs and assigns, against her, the said Elizabeth W. Phillips, her heirs —, and against the claim of all parties claiming
by, through, or under her, the property and real estate so
1139 conveyed being all the right, title, ownership, and interest, both in law and equity, of, in, and to said tract of land hereinbefore described, and being the estate of Austin Phillips, which said Elizabeth W. Phillips holds an undivided interest therein as an heir-at-law of said Austin Philips, deceased. In said tract of

land the said Elizabeth W. Phillips hereby quitclaims all of the [her] interest therein to said Henry Angel, his heirs and assigns, forever and will warrant and defend the same against all claims whatsoever.

Witness her hand and seal the day and year first above written.

ELIZABETH W. PHILLIPS.

STATE OF INDIANA, *City of Evansville,* } *sct:*

I, Azro Dyer, commissioner of deeds for the State of Kentucky, duly appointed and commissioned by the Governor thereof for the State of Indiana, authorized to take acknowledgement of deeds and other writings, do certify that this instrument of writing from Elizabeth W. Phillips to Henry Angel was this day produced to me in the city aforesaid by the parties, which was then and there acknowledged by the said Elizabeth W. Philips to be her act and deed for the purpose therein mentioned.

Given under my hand and seal of office this 14th day of March, A. D. 1868.

AZRO DYER,
Commissioner.

1140 STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, Frances E. Walker, clerk of the Henderson county court, do certify that this deed from E. W. Philips to Henry Angel was received into my office on the 11th day March, 1869, together with the certificates of acknowledgement thereof from the commissioner of deeds for the State of Kentucky, in the State of Indiana, and, being duly stamped, is, with this certificate, truly recorded in my office.

Witness my hand this the 12th day of March, 1869.

FRANCIS E. WALKER, *C. H. C. C.*

No. 57.

This indenture, made this 31st day of August, A. D. 1870, between Wilda Stansberry and Rachel Stansberry, his wife, of Vanderburgh county and State of Indiana, of the first part, and William Henry Stansberry, of Henderson county, in the State of Kentucky, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, & sold, and by these presents do grant, bargain and sell, convey & confirm, unto the said party of the second part, his heirs and assigns, forever the following-described lands and premises, to wit: Begin-
1141 ning at a stake on the north bank of the Ohio river, where the lands of the said Wilda Stansberry corner with the lands of George Yates, thence north six (6°) degrees and fifty minutes (50′) east on the land dividing the lands of said Stansberry and

Yates thirty-two (32) chains and fifty (50) links to a stake on the north bank of the bayou and south side of the public highway; thence north about seventy-four degrees (74°) west along the north bank of said bayou to a stake twenty-one (21) chains and eighty-five (85) links; thence south six (6°) degrees and fifty (50′) minutes west to the Ohio river; thence up the bank of the Ohio river to the place of beginning, containing seventy-two acres, more or less—said lands & premises are situated in Henderson county, in the State of Kentucky, on Green River Island—together with all and singular the appurtenances thereto belonging or in anywise appertaining; also all the estate, right, and title of the said parties of the first part of, in, or to the same; to have and to hold the land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the first part, *his* heirs and assigns, forever; and the parties of the first part, for their heirs, executors, and administrators, the aforesaid tract of land and
1142 premises, with the appurtenances aforesaid, unto the said party of the second part, him and assigns, against the claim of the parties of the first and all persons claiming by, from, through, or under them, and against all other persons, do and will warrant and forever defend by their presents.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 31st day of August, A. D. 1870.

his
WILDA x STANSBERRY. [SEAL.]
mark.

her
RACHEL x STANSBERRY. [SEAL.]
mark.

Attest: ROBERT D. RICHARDSON.

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Soren Sorrenson, clerk of the Vanderburgh circuit court for Vanderburgh county and State of Indiana, do hereby certify that the foregoing instrument of writing from Wilda Stansbury and Rachel, his wife, was this day produced to me by the parties, which was acknowledged by the said Wilda Stansberry to be his act and deed, and the contents and effect of the instrument being explained to the said Rachel Stansberry by me, separate and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and
1143 consented that the same might be recorded. Given under my hand and seal of said court this 2d day of September, 1870.

S. SORENSON.
Clerk Vanderburgh Circuit Court.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, F. E. Walker, clerk of the Henderson county court, do certify

that this deed from Wilda Stansberry and wife to William H. Stansberry, being stamped with a one-dollar U. S. revenue stamp, and the foregoing certificate of the clerk of the Vanderburgh county, Indiana, circuit court and this certificate, — truly recorded in my office. Witness my hand this 20th day of September, 1871.

F. E. WALKER, *C. H. C. C.*,
By JOHN C. ADAMS, *D. C.*

No. 58.

This indenture, made and entered into this 9th day of January, 1883, between Edward Atkinson and Wm. J. Marshall, trustees appointed by the last will and testament by [of] George Atkinson, deceased, to divide and make conveyance of his real estate, of the first part, and John C. Atkinson, a devisee of said decedent, of
1144 the second part, witnesseth: That whereas the said decedent, by his last will and testament, duly proven and recorded in the county court of Henderson county, devised to the said John C. Atkinson one-fourth part of his real estate after the payment of all his debts and liabilities and the performance of certain directions set forth in said will, and did appoint the said parties trustees to make division of his estate, and the said parties of the first part trustees to convey to the said party of the second part the share allotted to him; and whereas it appears to the satisfaction of the executor of said will that by retaining for the present the management and control of the lands in Union county, Kentucky, he can out of the rents and profits thereof probably pay off and discharge to the satisfaction of the creditors the balance of the debts remaining unpaid, and also carry out the provision of said will in the other matters directed to be done; and whereas the devisees under said will have given to said executor satisfactory pledge of the rents and profits of their several shares to indemnify him against loss, and to secure him and to secure to him the means for paying any balance of said debts; and whereas the said trustees did heretofore, viz., on the — day of December, 1882, divide the said real estate (except the land in Union county aforesaid) into
1145 four equal shares, as directed by said will, and did then draw lots for the several shares, in which allotment there fell to the said John C. Atkinson the several tracts, parcels, and lots of land hereinafter described: Now, therefore, by the authority of said will and in pursuance thereof, the said parties of the first part do hereby grant and convey unto the said John C. Atkinson the following-described property, viz: (1) Lot No. 2, in the division of said decedent's farm in the Evansville (or Horseshoe) bend of Henderson county, Kentucky, and bounded as follows, viz: Beginning at a stake between two cotton-woods and a small elm on the bank of the Ohio river, corner to lot No. 1, running thence S. 36° W. (passing at 17 poles a stake one foot below a black locust on the Evansville road), in all 325 poles, to a stake in the midst of three small ash saplings and 24 links from a broken-top elm and corner to lot No. 1 in the Reeve line; thence south 46½° E. 42 poles and 12

links to a stake 1 pole 8 links from two maples and corner to lot No. 3; thence with the line of lot No. 3 N. 56¾° E., passing at 264 poles a stake between two black locusts, from which the N. E. corner of the corn-crib bears N. 22 W. (distant 7 poles and 20 links), in all 296 poles, to a stake on the bank
1146 of the Ohio river, 3 small elms and a sycamore, pointers and corner to lot No. 3; thence down the river, as it meanders, N. 32¾° W. 104 poles, N. 22¼ W. 54 poles, to the beginning, containing 177 acres of land, 161 acres being cleared land. (2.) Lot No. 4 in the division of said decedent's farm on Green River Island, in Henderson county, Kentucky, and bounded as follows: Beginning at an elm, the original upper corner of the tract on the bank of the bayou, and running thence N. 4¼° E. (crossing the bayou) 27 poles to a stake, corner to lot No. 3; thence S. 20° W. 312 poles to a post at the foot of the original bank of the island on the river front, corner to lot No. 3; thence at right angles to the course of the stream of the Ohio river S. 54¼° W. 50 poles to a stake at low-water mark in said river and corner to lot No. 3; thence up said river with the line of low-water mark S. 35¾° E. 83 poles, S. 42° E. 46 poles, to a stake at low-water mark in said Ohio river and corner to the Matthews' tract; thence at right angles to the course of the Ohio river N. 48° E. 65 poles to a group of 3 cotton-woods, the original corner on the bank of the island; thence N. 4¼° E. 346 poles to the beginning, and containing 155 acres, more or less. (3.) A certain house and lot of ground in the city of Henderson, being the late
1147 residence of said decedent, and bounded as follows: Beginning at the northwest corner of Main and Third streets and running thence with the line of Main 110 feet 2 inches to a stake, corner to the lot of Geo. M. and M. F. Atkinson; thence with the line of their lot 212 feet 5 inches to the line of an alley 12 feet wide; thence with the line of said alley 115 feet to the stake in the line of Third street; thence with the line of Third street 212 feet 5 inches to the beginning; to have and to hold unto him, the said John C. Ankinson, and his heirs forever, in fee simple, as directed by said deed, with covenant of such warranty as by said will the said parties of the first part are empowered to make, and no other.

In witness whereof the said parties of the first part have hereunto set their hands this 9th day of January, A. D. 1883.

EDW'D ATKINSON, [SEAL.]
WM. J. MARSHALL, [SEAL.]
Trustees of Aforesaid.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that this deed from Edward Atkinson and Wm. J. Marshall,
1148 trustees, to John C. Atkinson was this day acknowledged before me, in my office, by the said Edward Atkinson and Wm. J. Marshall to be their act and deed, and the same is, with this certificate, truly recorded in my office.

Witness my hand this 9th day of January, 1883.

GEO. W. SMITH, *C. H. C. C.*,
By THOS. W. BEVERLEY, *D. C.*

No. 59.

This indenture witnesseth: That Julius A. Coleman & Nannie M. Coleman, his wife, of Vanderburgh county, in the State of Indiana, convey and warrant to L. W. Coleman, of Henderson county, in the State of Kentucky, for the sum of five thousand dollars, the following real estate, in Henderson county, in the State of Kentucky, to wit: On the lower end of Green River Island, beginning at 2 willows & maple, in Geo. Atkinson's line, thence with Atkinson's line N. 52° E. 95 poles & 6 links to a hackberry stump & box elder, corner to Atkinson's tract; thence in the same course N. 52° E. crossing Green River Island bayou 37 poles and 21 links to a stake in the Indiana & Ky. State line, as located in 1875; thence with said State line N. 31¾° W. 15 poles & 9 links to a stone; thence with the State line N. 29¾° W. 54 poles 13 links to a stone marked D. N. W. & A. P.; thence with the State line N. 20½° W. 39 poles to a stone
1149 marked A; thence N. 17¼° W. 16 poles to a stake; thence N. 84¾° W. 15 poles 15 links to a point in the centre of the bayou; thence down the bayou N. 20¼° W. 33 poles 1 link to a stake on the side of the bayou; thence down the bayou N. 45¼° W. passing out of the bayou at 36 poles, in all 54 poles 16 links, to a stake on the bank of the Ohio river; thence S. 52° W. 296 poles to a point on the bar in line with the beginning; thence, to the beginning, N. 52° E. 50 poles 16 links to the beginning, containing about 130 acres, more particularly described in Book 82, page 79, in the register of the land office.

In witness whereof the said Julius A. Coleman & Nannie M. Coleman have hereunto set their hands this 1st day of January, 1878.

J. A. COLEMAN.
N. M. COLEMAN.

STATE OF INDIANA, }
Vanderburgh County, } *sct:*

Before me, Frederick W. Smith, a notary public in and for said county, this 1st day of January, 1878, personally appeared Julius A. Coleman and Nannie M. Coleman, his wife, and acknowledged the execution of the foregoing deed, and the said Nannie M. Coleman being examined by me separate and apart from her husband, the
1150 contents and effect of said instrument duly explained to her, she declared that she freely and voluntarily executed — same and consented that it might be put to record.

Witness my hand & notarial seal.

[SEAL.] W. FREDERICK SMITH,
Notary Public.

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do certify that this deed from J. A. Coleman and N. M. Coleman, his wife, to L. W. Coleman was this day lodged in my office for record, together with the certificate of a notary public of Vanderburgh county, Indiana, thereon endorsed, and the same is, with this certificate, truly recorded in my office.

Witness my hand this 25th day of January, 1878.

GEO. W. SMITH, *C. H. C. C.*,
By ALEX. M. BURCH, *D. C.*

No. 60.

This indenture, made and entered into this 24th day of May, 1880, by and between W. P. McClain, of the county of Henderson and State of Kentucky, of the first part, and Christian Mayer, of the county of Vanderburgh and State of Indiana, witnesseth:
1151 That for and in consideration of the sum of thirteen hundred and twenty dollars ($1,325), cash in hand, the receipt of which is hereby acknowledged, the said McClain has this day bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said Christian Mayer the following tract of land, to wit: A tract of land, being the same sold by title bond dated May 12th, 1860, by Wm. McClain to John H. Matthews, and afterwards, under an order of the Henderson court of common pleas, was sold by H. H. Shouse, master commissioner of said court, at its February term, 1877, and deeded to said McClain, party of the first part, he being purchaser at said sale, containing 26½ acres, bounded as follows: Beginning at four (4) cotton-woods on the bank of the Ohio river, corner to Jackson McClain's, 130, thence with his line N. 22½ E. 179½ poles to a pawpaw, elm, hickory, and box elder, corner to lot No. (2) or Ann Matthews, now Yates; thence with her line N. 68 west 24½ poles to a stake just beyond and near a maple and pecan; thence S. 22½ W. 169 poles to a stake on the bank of the Ohio river, below two (2) cotton-woods; thence up the Ohio river, as it meanders, S. 47 E. 25½ poles to the beginning; said land is situated on Green River Island, in the county of Henderson and State of
1152 Kentucky; to have and to hold unto the said Christian Meyer, his heirs and assigns, forever, with covenant of general warranty.

In testimony whereof the said W. P. McClain has hereunto affixed his hand and seal the day and year first above written.

W. P. McCLAIN.

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, George W. Smith, clerk of the Henderson county court, do certify that this deed from Wm. P. McClain to Christian Meyer was, on the 24th of May, 1880, acknowledged before me, in my office, by

the said Wm. P. McClain to be his act and deed, and the same is, with this certificate, truly recorded in my office.

Witness my hand this 25th day of May, 1880.

GEO. W. SMITH, *C. H. C. C.*,
By SAM. W. SIZEMORE, *D. C.*

No. 61.

This indenture, made this fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-four, between Corydon Garrett and Sarah Garrett, his wife, of Vanderburgh county, in the State of Indiana, of the first part, and David Elkins, of Green River Island, in Henderson county, in Kentucky,
1153 of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of thirteen hundred and eighteen dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm, unto the said party of the second part and his heirs and assigns forever the following-described tract or piece of land, to wit: Beginning on the bank of the Ohio river on Green River Island, in Henderson county, Kentucky, at a stake, running thence north 6° 50′ east thirty-one chains and fifty links to about the middle of the bayou; thence north 87° west down said bayou sixteen chains and seventy-five links; thence south 9° 30′ west thirty-two chains and seventy-five links to the bank of the river (88 links from a black walnut tree in said line); thence south 86′ east eighteen chains and ninety-four links to the place of beginning, containing fifty-seven acres and thirty-hundredths of an acre, on said island, in Henderson county, Kentucky; together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, and title of the said parties of the first part of, in, or to the same; to have and to hold the
1154 land and premises hereby conveyed and interest therein above described, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, the aforesaid tract of land and premises, with the appurtenances aforesaid, unto the said party of the second part and his heirs and assigns, against the claim of the parties of the first part and all persons claiming by, from, through, or under them or either of them and against the lawful claims of all other persons whomsoever, do and will warrant and forever defend by these presents.

In testimony whereof the above-named parties of the first part have hereunto set their hands and seals this the date above written.

CORYDON GARRETT. [SEAL.]
SARAH GARRETT. [SEAL.]

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

Before me, Asa Iglehart, judge of the court of common pleas in and for said county, on this fourteenth day of December, A. D. 1854, Corydon Garrett and Sarah Garrett produced this deed or instrument of writing and then and there acknowledged the execution of the same as their voluntary act and deed, and the con-
1155 tents and the effect of the within deed being explained to the said Sarah Garrett by me, separate and apart from her husband, she thereupon declared that — did, and had, freely and voluntarily acknowledge the execution of the within and foregoing deed and delivered the same to be her act and deed, and consented that the same might be recorded.

Witness my hand & official seal, at Evansville, Indiana, this the date above written.

ASA IGLEHART, [SEAL.]
J. C. C. P., V. C.

STATE OF INDIANA, } *sct:*
Vanderburgh County, }

I, Joseph Lunkenheimer, clerk of the court of common pleas of Vanderburgh county, do hereby certify that the Hon. Asa Iglehart is the sole judge of the court of common pleas for the district composed of the counties of Vanderburgh and Warrick, in the State of Indiana, duly elected and qualified & authorized by law to take the acknowledgements of deeds & other instruments of writing, & that full faith and credit are due and ought to be given to all his official acts as such judge, and that his signature to the within certificate is genuine.

In testimony whereof I hereto sign my name & affix the
1156 seal of said court, at Evansville, this the 14th day of December, 1854.

JACOB LUNKENHEIMER,
Clk C. C. P., V. C.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, William D. Allison, clerk of the county court of Henderson county aforesaid, do certify that this deed from Corydon Garrett and Sarah Garrett, his wife, to David Elkins, and the foregoing certificates of the acknowledgement and authentification thereof, and also this certificate, were all this day truly recorded in my office.

Witness my hand this 5th day of May, 1855.

WILL. D. ALLISON, *C. H. C. C.*

No. 62.

Whereas Jackson McClain, Ann Matthews, and John H. Matthews are the owners of a tract of land on Green River Island, Henderson county, Kentucky, containing 305 acres, in which the said Ann

Matthews has an undivided interest *of*, and heretofore the said parties did agree to a division according to ther respective interests made by D. N. Walden & Harbison Butler, in which division there was allotted to the said Ann Matthews a tract of land called in the division lot No. 2, bounded as follows: Beginning at 2 syca-
1157 mores on the bank of the island chute and corner lot No. 1, thence down said island chute N. 55° W. 64 poles, more or less, to a stake, corner to Hurley & Phillips; thence with their line S. 40° west 114 poles to a stake, two box elders marked as corner trees, and corner to the said Hurley & Philips; thence with another of their lines N. 50° west 56 poles to a stake in the original line of the land bought by E. Matthews from Terry's heirs; thence with said line S. 34° west 52 poles to a stake, 2 hackberries, & box elder marked corner trees; thence S. 68° E. 132 poles to a stake with a pawpaw, elm, hackberry, & box elder in the line of lot No. 1; thence with the line of lot No. 1 W. 22° east 122 poles to the beginning, containing seventy-nine acres: Now, for the purpose of carrying out said division and conveying to each party the portion allotted thereby, and in consideration of one dollar in hand paid, the said Jackson McClain and John H. Matthews hereby release and convey to the said Ann Matthews the seventy-nine acres of land above described, with its appurtenances; to have and to hold to her and her heirs or assigns forever, with covenant of special warrants—that is, free from the claim or claims of all persons claiming by, through, or under them, the said Jackson McClain & John H. Matthews, or their heirs.

Witness the hands & seals of the said Jackson McClain &
1158 John H. Matthews this 13th day of September, A. D. 1860.

JOHN H. MATTHEWS. [SEAL.]
CAROLINE M. MATTHEWS. [SEAL.]
JACKSON McCLAIN. [SEAL.]
LOUISA McCLAIN. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, George W. Smith, clerk of the Henderson county court, do certify that this deed from Jackson McClain and wife and John H. Matthews and wife to Ann Matthews was acknowledged before Young E. Allison, a former clerk of this court, on the 13th day of September, 1860, by the said Jackson McClain and Louisa McClain, his wife, John H. Matthews and Caroline M. Matthews, his wife, to be their act and deed, as appears from an endorsement on said deed, in the proper handwriting of said Young E. Allison. Thereupon the same is, with this certificate, truly recorded in my office.

Witness my hand this 20th day of May, 1875.

GEORGE W. SMITH, *C. H. C. C.*,
By ALEX. M. BURK, *D. C.*

1159 No. 63.

This indenture, made and entered into this 9th day of January, 1883, between John C. Atkinson and William J. Marshall, trustees appointed by the last will and testament of George Atkinson, deceased, to divide and make conveyance of his real estate, of the first part, and Edward Atkinson, a devisee of said decedent, of the second part, witnesseth: That whereas the said decedent, by his last will and testament, duly proven and recorded in the county court of Henderson county, devised to the said Edward Atkinson one-fourth part of his real estate after the payment of all his debts and liabilities and the performance of certain directions set forth in said will, and did appoint the said parties trustees to make division of his estate, and the said parties of the first part trustees to convey to the said party of the second part the share allotted to him; and whereas it appears to the satisfaction of the executor of said will that by retaining for the present the management and control of the lands in Union county, Kentucky, he can, out of the rents and profits thereof, probably pay off and discharge to the satisfaction of the creditors the balance of the debts remaining unpaid, and also carry out the provisions of said will in the other matters directed to be done; and whereas the devisees under said will have
1160 given to said executor satisfactory pledge of the rents and profits of their several shares to indemnify him against loss and to secure to him the means for paying any balance of said debts; and whereas the said trustees did heretofore, viz., on the — day of December, 1882, divide the said real estate (except the land in Union county aforesaid) into four equal shares, as directed by said will, and did then draw lots for the several shares, in which allotment there fell to the said Edward Atkinson the several tracts, parcels, and lots of land herein often [after] described: Now, therefore, by the authority of said will and in pursuance thereof, the said parties of the first part do hereby grant and convey unto the said Edward Atkinson the following-described property, viz: (1.) Lot No. 1 in the division of said decedent's farm on Green River Island, in Henderson county, Kentucky: Beginning at a stake in the boundary line between the States of Kentucky and Indiana as located by Commissioners D. N. Walden and A. Pfafflin in the year 1875, from which stake an elm 18 inches in diameter bears N. 41¼° W., distant two poles and 19 links, and an elm 2½ feet in diameter bears N. 48¾° west, distant 3 poles, and corner to Coleman tract, running thence S. 52° W. (crossing the bayou and passing at 37 poles and 21 links a post marked A & C, where a box elder and hackberry formerly stood), in all 133 poles and 2 links, to a post
1161 marked "A & C," where a maple and two willows, the original corner, formerly stood on the river front of the island; thence at right angles to the course of the stream of the Ohio river S. 85½° W. 55 poles to stake at low-water mark in Ohio river; thence up said river with the line of low-water mark S. 4½° E. 139 poles to a stake at low-water mark in said river and corner to lot No. 2; thence N. 85½° E. 55 poles to a post at the foot of the original bank

of the island, corner to said lot No. 2; thence N. 53½° E. 212 poles to a stake in the State line between Kentucky and Indiana located as aforesaid; thence with the said State line N. 35½° W. 36 poles and 16 links to a stone; thence N. 33½° W. 71 poles and 9 links to the beginning, containing 160 acres, more or less. (2.) Lot No. 3 in the division of said decedent's farm in Evansville (or Horseshoe) Bend, in Henderson County, Kentucky, and bounded as follows: Beginning at a stake on the bank of the Ohio river, 3 small elms and a sycamore pointers, corner to lot No. 2; running thence S. 56¾° W., passing a stake between two black locusts, from which the northeast corner of the corn-crib bears N. 22° W. distant 7 poles and 20 links at 32 poles, in all 296 poles, to a stake one pole and 8 links from two maples in the Reeve line and corner to lot No. 2; thence S.
1162 46½° east 82 poles and 12 links to a stake on a ridge in the Stanley line and corner to lot No. 4; thence N. 60¼° E., passing at 177 poles to a stake at the end of the present turning row, in all 189 poles, to a stake in the leading bayou and in Dr. J. H. Harding's line, corner to lot No. 4; thence with bayou, as it meanders, N. 18° W. 20 poles, N. 30° E. 16 poles, N. 2° E. 16 poles, N. 33° E. 16 poles, N. 24° E. 16 poles, N. 36° E. 18 poles, N. 6° E. 8 poles, to the mouth of the leading bayou at the Ohio river; thence down the river, as it meanders, N. 35° W. 25 poles to the beginning, containing 134¼ acres, of which 115 acres being cleared land. (3.) A certain house and lot of ground lying in the city of Henderson, Kentucky, on the south side of Second street between Main and Water streets, and bounded as follows, viz: Beginning at the corner of Dr. J. H. Harding'- store-house in the line of Second street, running thence with the line of 2nd street S. 71° E. 72 feet 11¼ inches to a stake, corner to the lot of Mary T. Duncan & trustees; thence at right angles to said street S. 19 W. 134 feet to a stake in the line of an alley; thence with the line of said alley N. 71° W. 72 feet 11¼ inches to a stake; thence at right angles to said alley N. 19° E. 134 feet to the beginning. A certain lot and parcel of ground lying in the city of Henderson, on the north side of Second street between Main and Water
1163 streets, bounded as follows, viz; Beginning at a stake in the line of Second street 22 feet 4½ inches from the corner of Second and Water streets, running thence with the line of Second street 44 feet 8½ inches to a stake, corner to the lot of George M. Atkinson and M. T. Atkinson; thence with the line of their lot 92 feet 7 inches to a stake in the line of the alley next Woodruff Hall; thence with the line of said alley 44 feet 8½ inches to stake 22 feet 4½ inches from the junction of said alley with Water street; thence 92 feet 7 inches to the beginning. (5.) A certain lot and parcel of ground lying on the north side of Third street, in the city of Henderson, between Main and Water street, and bounded as follows: Beginning in the line of Third street, at the corner of the Henderson Woolen Mills lot, running thence with the line of Third street 50 feet to the corner of an alley 12 feet wide; thence with the line of said alley 100 feet to a stake, corner to the lot of Mrs. M. L. Duncan's trustee; thence with the line of said lot 50 feet to the corner

of the said Woolen Mills lot; thence with the line of said lot 100 feet to the beginning. (6.) A certain lot and parcel of ground lying in the city of Henderson, on the west side of Elm street between 9th and 10th streets, bounded as follows: Beginning at the
1164 corner of Ninth and Elm streets, and running thence with the line of Elm street 312 feet 4 inches to the corner of the lot of Mrs. M. T. Duncan's trustee; thence with the line of her lot 200 feet 2½ inches to a stake in the line of an alley 16 feet wide; thence with the line of said alley 312 feet 4 inches to the line of Ninth street; thence with the line of Ninth street 200 feet 2½ inches to the beginning. (7.) A certain lot and parcel of ground lying in the city of Henderson, on the west side of Main street between Third and Fourth streets, bounded as follows: Beginning at a stake, corner of the alley next Lambert and Main streets (six feet from the present Lambert fence), and running thence with the line of Main street 50 feet to the corner of the lot of Geo. M. Atkinson and M. F. Atkinson; thence with the line of their lot 212 feet 5 inches to the line of an alley 12 feet wide; thence with the line of said alley 50 feet to a stake in the line of the alley next Lambert's (six feet from the present Lambert fence); thence 212 feet 5 inches to the beginning. (8.) A certain lot and parcel of ground lying in the city of Henderson, on First street between Adams and Alves streets, fronting 100 feet on the south side of said First street, and running back at right angles to the line of said street 200 feet, and designated on the official map of said
1165 city as lot No. 3 of James Alves' first addition; to have and to hold unto him and his heirs forever in fee simple, as directed by said will, together with all and singular the appurtenances, rights, and franchises thereto appertaining or belonging, including the right to use the wall of the building now belonging to Dr. J. H. Harding, adjoining the lot on the south side of Second street, hereby conveyed, which right was reserved by the said decedent in the sale by him to Jacob Held of the lot where said building now stands, with covenant of such warranty as the said parties of the first part are by said will empowered to make, and no other.

In testimony whereof the said parties of the first part hereto set their hands and seals this 9th day of January, A. D. 1883.

JNO. C. ATKINSON,
W. J. MARSHALL,
Trustees as Aforesaid.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that this deed from Jno. C. Atkinson and Wm. J. Marshall, trustees, to Edward Atkinson was on the 9th day of Jan'y, 1883, ac-
1166 knowledged before me by the said Jno. C. Atkinson and Wm. J. Marshall to be their act and deed, and the same is, with this certificate, truly recorded in my office.

Witness my hand this 15th day of Jan'y, 1883.

GEO. W. SMITH, *C. H. C. C.*,
By THOS. H. BEVERLY, *D. C.*

No. 64.

This indenture, made and entered into this 9th day of January, 1883, between John C. Atkinson, Edward Atkinson, and William J. Marshall, trustees appointed by the last will and testament of George Atkinson, deceased, to divide and make conveyance of his real estate, of the first part, and George M. Atkinson and M. Frances Atkinson, devisees of said decedent, of the second part, witnesseth: That whereas the said decedent, by his last will and testament, duly proven and recorded in the county court of Henderson county, devised to the said George M. Atkinson and M. Frances Atkinson one-fourth part of his real estate, after the payment of all his debts and liabilities and the performance of certain directions set forth in said will, and did appoint the said parties of the first part trustees to make divisions of his estate and to convey to the devisees under said will the shares allotted to each; and whereas it appears to the satisfaction of the executors of said will that by retaining for the present the management and control of the lands in
1167 Union county, Kentucky, he can out of the rents and profits thereof probably pay off and discharge to the satisfaction of the creditors the balance of the debts remaining unpaid, and also carry out the provisions of said will in the other matters directed to be done; and whereas the devisees under said will have given to said executor satisfactory pledge of the rents and profits of their several shares to indemnify him against loss and to secure to him the means for paying any balance of said debts; and whereas the said trustees did heretofore, viz., on the — day of December, 1882, divide the said real estate (except the land in Union county aforesaid) into four equal shares, as directed by said will, and did then draw lots for the several shares, in which allotment there fell to the said George M. Atkinson and M. Frances Atkinson the several tracts, parcels, and lots of land hereinafter described; and whereas the first codicil to said will (appointing trustees for said parties of the second part until they attain certain ages) has become nugatory by means of the fact that the said parties of the second part have already attained the respective ages when by the terms of said codicil their property should be transformed [transferred] to them: Now, there-
1168 fore, by the authority of said will and in pursuance thereof, the said parties of the first part do hereby grant and convey unto the said George M. Atkinson and M. Frances Atkinson the following-described property, viz: 1st. Lot No. 1, in the division of said decedent's farm in the Evansville (or Horseshoe) bend, in Henderson county, Kentucky: Beginning at a stake just above a sycamore in the mouth of a bayou, on the bank of the Ohio river and corner to the Butler tract, running thence S. 36° W. (passing the Evansville road at 25 poles), in all 355 poles, to a stake in a bayou, from which a large maple bears N. 84¾° W., distant one pole and 22 links (over cup oak and pecan, gone), in the line of the Reeve tract (formerly the Ingram tract); thence S. 46½° E. 50 poles to a stake in the midst of the small ash saplings and 24 links from a broken-top elm and corner to lot No. 2 of the said division; thence with the line of said

lot N. 36° E. (passing the Evansville road at 308 poles), where a stake is set one foot below a black locust, in all 325 poles, to a stake between two cotton-woods and a small elm, corner to lot No. 2, on the bank of said river; thence down the said river, as it meanders, N. 27° W. 54 poles to the beginning, — one hundred and seven and one-half (107½) acres, of which 100 acres is cleared land. 2. Lot No. 2, in the division of said decedent's farm on Green — Island, in Henderson county, Ky.: Beginning at a stake in the boundary line between the States of Kentucky and
1169 Indiana, as located by Commissioners D. N. Walden and A. Pfafflin in the year 1875, corner to lot No. 1; thence S. 53½° W. 212 poles to a post at the foot of the original bank of the island and corner to lot No. 1; thence at right angles to the course of the stream of the Ohio river S. 85½° W. 55 poles to a stake at low-water mark in said river, and corner to lot No. 1; thence up said river with the line of low-water mark S. 4½° E. 2 poles, S. 13° E. 83 poles, S. 18° E. 4 poles, S. 21½° E. 15 poles, to a stake at low-water mark in said river and corner to lot No. 3; thence at right angles to the course of the river N. 68½° E. 50 poles to a post at the foot of the original bank of the island and corner to lot No. 3, in the State line between Kentucky and Indiana, as located by the commissioners aforesaid; thence with the said State line N. 38¾ W. 31 poles, N. 35½ W. 16 poles and 19 links, to the beginning. containing 157½ acres, more or less. (3.) A certain lot or parcel of land lying in the city of Henderson, on Second street, on the north side thereof, and near Water street, beginning in the line of said Second — at the corner of Rob't Rouse's lot, thence with the line of said street 22 feet 4½ inches to the corner of Edward Atkinson's lot, thence with the line of his lot 92 feet 7 inches to the line of the alley next Woodruff
1170 Hall, thence with the line of said alley 22 feet 4½ inches to the corner of Robert Rouse's lot, thence 92 feet 7 inches to the beginning. (4.) A certain lot and parcel of land lying in the city of Henderson, on the west side of Main street between 3rd and 4th streets, beginning at a point in the line of Main street, corner to John C. Atkinson's lot, thence with the line of Main street 50 feet to the corner of Edward Atkinson's lot, *thence with the line of Main street 50 feet to the corner of Edward Atkinson's lot*, thence with the line of his lot 212 feet 5 inches to the line of an alley 12 feet wide, thence with the line of said alley 50 feet to the corner of Jno. C. Atkinson's lot, thence with the line of his lot 212 feet 5 inches to the beginning. (5.) A certain lot and parcel of land lying in the city of Henderson, on the east side of Main street between 9th and 10th streets, beginning at the corner of Main and Tenth streets, thence with the line of Main street 150 feet 14 inches to the corner of Mrs. Mary T. Duncan's trustee's lot, thence with the line of said Duncan lot 200 feet 2½ inches to the line of an alley 16 feet wide, thence with the line of said alley 150 feet 1¾ inches to the line of Tenth street, thence with the line of Tenth street 200 feet 2½ inches to the beginning. (6.) A certain house and lot and parcel of land
1171 lying in the city of Henderson, on the south side of Third street between Elm & Green streets, being a part of original

lot No. 96: Beginning at a stake 10 feet N. 71 west from the corner of lot 95 in the line of Third street; thence S. 19° W. 104 feet 4 inches to a stake; thence N. 71 W. 94 feet 4 in. to a stake; thence N. 19° E. 104 feet 4 inches to a stake in the line of Third street; thence with the line of said street S. 71 E. 94 feet 4 inches to the beginning. (7.) A certain house and lot and parcel of land lying in the city of Henderson, on the south side of Second street between Main and Water streets: Beginning at the corner of an alley in the line of Second street; thence with the line of Second street N. 71 W. 30 feet to a stake in the line of Mrs. M. T. Duncan's trustee's lot; thence S. 19 W. 134 feet to a stake in the line of an alley; thence S. 71 E. 30 feet with the line of said alley to a stake in the line of the alley first mentioned; thence N. 19 E. with the line of said alley to the beginning; but it is expressly convented [covenanted] that the wall of the building now standing on said lot may be used by the owner of the adjoining lot on the western side whenever he may build thereon; to have and to hold to them, their heirs and assigns,
1172 or to the survivors of them, as devised and directed by said will and subject to the defeasance therein prescribed, with covenant of such warranty as the parties of the first part are by said will empowered to make, and no other.

In testimony whereof the said parties of the first part have hereto set their hands this 9th day of January, A. D. 1883.

JOHN C. ATKINSON. [SEAL.]
EDWARD ATKINSON. [SEAL.]
WM. J. MARSHALL. [SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that this deed from Jno. C. Atkinson and others, trustees, to Geo. M. Atkinson and M. Frances Atkinson was on the 9th day of January, 1883, acknowledged before me in my office by Jno. C. Atkinson, Edward Atkinson, and Wm. J. Marshall to be their act and deed, and the same is, with this certificate, truly recorded in my office.

Witness my hand this 21st day of August, 1883.

GEO. W. SMITH, *C. H. C. C.*,
By THOS. H. BEVERLY, *D. C.*

No. 65.

This indenture, made this 23rd day of January, 1885, between Geo. W. Yates, of the county of Vanderburgh and State of In-
1173 diana, party of the first part, and John B. Baird, of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of one dollar to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold and conveyed, and does hereby grant, bargain, sell, and convey, to the party of the second part all that — or parcel of land situated in the State of Kentucky and county of Henderson and on Green River Island, in said

county and State, thus bounded: Beginning at a cotton-wood tree on said island on the main river, Ohio, at the upper corner of land of Wilda Standsberry, running thence north six (6) degrees east one hundred & twenty-nine poles, more or less, to the Indiana State line; thence easterly along the said boundary line between the States of Indiana and Kentucky to the head of said island; thence around and with the head of said island to the main river, Ohio; thence down said river, with the several meanders thereof, to the place of beginning, containing eighty-two acres of land, be the same more or less; to have and to hold the said tract of land to him, the said John B. Baird, his heirs and assigns, forever.

Witness the hand and seal of the said George W. Yates, party of the first part, the day and year first above written.

GEORGE W. YATES. [SEAL.]

1174 STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed was this day lodged in my office for record, and that I have recorded it, the foregoing and this certificate, in my said office. Witness my hand this January 26th, 1885.

GEO. W. SMITH, *Clerk,*
By T. H. BEVERLY, *D. C.*

STATE OF INDIANA, *County of Vanderburgh:*

I, C. A. De Bruler, a notary public in and for the said county and State, do hereby certify that this instrument of writing from Geo. W. Yates to John B. Baird was this day produced to me by the parties, and was acknowledged by the said George W. Yates to be his act and deed.

Given under my hand and seal of office this 24th day of January, 1885.

[SEAL.] C. A. DE BRULER,
Notary Public.

No. 66.

This indenture, made this 23rd day of January, 1885, between John B. Baird, of the county of Vanderburgh and State of Indiana, the party of the first part, and Susanna Yates, the party of
1175 the second part, witnesseth: That said party of the first part, for and in consideration of the sum of one dollar paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold & conveyed, and does hereby grant, bargain, sell, and convey, to the party of the second part all that tract or parcel of land situated in the State of Kentucky and county of Henderson and on Green River Island, in said county and State, thus bounded: Beginning at a cotton-wood tree on said island, on the main river, Ohio, at the upper corner of land of Wilda Stansberry, running thence north

six (6) degrees east one hundred and twenty-nine poles, more or less, to the Indiana State line; thence easterly along the said boundary line between the States of Indiana and Kentucky to the head of said island; thence around and with the head of said island to the main river, Ohio; thence down the said river, with the several meanders thereof, to the place of beginning, containing eighty-two acres of land, be the same more or less; to have and to hold the said tract of land to her, the said Susanna Yates, her heirs and assigns, forever.

Witness the hand and seal of the said John B. Baird, party of the first part, the day and year first above written.

JOHN B. BAIRD. [SEAL.]

1176 STATE OF INDIANA, *County of Vanderburgh:*

I, C. A. Debruler, a notary public in and for the county and State aforesaid, do hereby certify that this instrument of writing from John B. Baird to Susanna Yates was this day produced to me by the parties, and was acknowledged by the said John B. Baird to be his act and deed.

Given under my hand and seal of office this 24th day of January, 1885.

C. A. DE BRULER,
Notary Public.

[SEAL.]

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed was this day produced to me and lodged for record in my office, and that I have recorded it, the foregoing and this certificate, in my said office.

Witness my hand this 25th day of Jan'y, 1885.

GEO. W. SMITH, *Clerk,*
By T. H. BEVERLY, *D. C.*

No. 67.

Whereas in the action of W. T. Crenshaw, g'd'n, &c., plaintiffs, against Virgie Matthews, &c., defendants, pending in the Henderson circuit court, an order was entered at the October term,
1177 1884, directing S. A. Young, commissioner of said court, to expose for sale, at public auction, to the highest and best bidder, the property described; and whereas said property was sold in accordance with said order on the 22 day of December, 1884, for the sum of fourteen hundred and one dollars, when Charles H. Bruning and Theodore Hartig became the purchasers thereof; and whereas the report of said sale was confirmed by said court at the January term of 1885, — an order was entered directing S. A. Young, commissioner, to execute a deed of conveyance of said property to said Charles H. Bruning & Theodore Hartig, but for greater certainty the record and proceedings in said case are referred to: Now,

therefore, this indenture, made and entered into this 26th day of January, 1885, between Mrs. Carrie Crenshaw, W. T. Crenshaw, Geo. Mathews & Luther Mathews & Virgie Mathews, by S. A. Young, commissioner of the said court, of the first part, and Charles H. Bruning & Theodore Hartig, of the second part, witnesseth: That for and in consideration of the premises the parties of the first part, S. A. Young, commissioner aforesaid, has sold, and by this writing does convey, to said parties of the second part and their heirs and assigns forever the following-described property, to wit: The interest of Virgie Mathews in the dower tract, the same being one-third in remainder, subject to the life estate of her mother,
1178 the plaintiff, Mrs. Carrie Crenshaw, and said dower tract is described as follows: Beginning at a stake just above two cotton-woods on the original river front of Green River Island, corner to the Atkinson tract, running thence with the Atkinson line N. 4¼ E. 151 poles to a stake in said line, corner to the land of Mrs. Mary Ann Yates (2 hackberries, box alder, gone); thence with the Yates line S. 69 E. 43 poles 16 links to a stake, corner to lot No. 1 of this division; thence with the line of lot No. 1 S. 13½ W. 155⅕ poles to a stake on the original river front of Green River Island, from which a large cotton-wood bears S. 38½ E. distant 1 pole & 1 link; thence across the accretion at right angles to course of the Ohio river S. 48 W. 65 poles to a stake at low water made in the Ohio river; thence down the river with the line of low-water mark N. 42 W. 23¼ poles to a stake at low-water mark in said Ohio river, corner to the Atkinson tract; thence with the Atkinson line N. 48 E. 65 poles to the beginning, containing, of the original survey, 29¼ acres & of accretion 9⅔ acres; also the tract allotted to said Virgie, which is bounded & described as follows, viz: Beginning at a stake in the original river front of Green River Island, corner to lot No. 1, from which stake a cotton-wood 2½ feet in diameter bears N. 29¼ W. distant 4 links, running
1179 thence with the line of lot No. 1 N. 17° 51′ E. 159 poles & 15 links to a stake in a slough and in the Yates line, and corner to lot No. 1; thence with the Yates line S. 67, corner to lot, E. 24 poles & 13 links to a stake in said Yates line, corner to lot No. 3 of the division; thence with the line of lot No. 3 S. 21½ W. 163 poles & 17 links to a stake on the original front of Green River Island, corner to said lot No. 3, from which stake a maple 2½ feet in diameter bears S. 1° E. distant 14 links; thence across the accretion S. 39¼ W. 66 poles to a stake at low-water mark on the Ohio river, corner — lot No. 3; thence down the river with line of low-water mark 18½ poles to a stake at low-water mark in said river, & corner to lot No. 1; thence with the line of lot No. 1 N. 48 E. 65 poles to the beginning, containing 19$\frac{6}{10}$ acres, together with the accretion allotted thereto of 7¾ acres, being lot No. 2 of the division; to have and to hold said property, with its appurtenances, unto the said grantees, their heirs and assigns, the said commissioner conveys all the right, title, and interest, legal — equitable, of the said Mrs. Carrie Crenshaw, W. F. Crenshaw, Geo. Mathews, and Luther Mathews & Virgie Mathews in and to said property, and warrants the title thereto, so

far as he is authorized by the judgment, orders, & proceedings
1180 in said course [cause], and no further, but he does not bind himself personally by anything contained herein in any event whatever.

In testimony whereof said S. A. Young, commissioner aforesaid, has hereunto subscribed his name this 26th day of January, 1885.

S. A. YOUNG,
Commissioner.

Acknowledged by the commissioner. Examined and approved in open court this 26th day of January, 1885.

BEN. P. CISSELL, *Judge.*

STATE OF KENTUCKY, }
Hend. Circuit Court, } *sct:*

I, S. A. Young, clerk of the Henderson circuit court, do hereby certify that this deed from Mrs. Carrie Crenshaw & others, by S. A. Young, commissioner of said court, to Charles H. Bruning & Theodore Hartig was, on the 26th day of January, 1885, presented in open court by S. A. Young, commissioner, and was by him duly acknowledged to be his act and deed, and the said deed, having been examined by the court, was approved and confirmed, & so endorsed by the judge, and ordered to be transmitted, duly certified, to the clerk of the Henderson county court for record, which is now done accordingly.

Given under my hand this 26th day of January, 1885.

Attest:

S. A. YOUNG,
Clerk Hend. Circuit Court,
By MORGAN STANLEY, *D. C.*

1181 STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed was this day lodged in my office for record and that I have recorded it, *the foregoing deed was this day lodged in my office for record and that I have recorded it,* the foregoing and this certificate, in my said office.

Witness my hand this January 27, 1885.

GEO. W. SMITH, *Clerk,*
By T. H. BEVERLY, *D. C.*

No. 68.

This indenture, made and entered into this 9th day of January, 1883, between Edward Atkinson and William J. Marshall, trustees appointed by the last will and testament of George Atkinson, dec'd, to divide and make conveyance of his real estate, of the first part, and John C. Atkinson, trustee for Mary T. Duncan, wife of Blanton Duncan, a devisee of the said decedent, of the second part, witnesseth: That whereas the said decedent, by his last will and testament, duly proven and recorded in the county court of Henderson

county, devised to the said John C. Atkinson and Edward Atkinson, in trust for the separate use and benefit of said Mary T.
1182 Duncan, wife of Blanton Duncan, one-fourth part of his real estate after the payment of all his debts and liabilities and the performance of certain directions set forth in said will, and did appoint the said parties trustees to make division of his estate, and the said William J. Marshall a trustee to make conveyance to the said John C. Atkinson and Edward Atkinson, as trustees aforesaid, of the share allotted to them in trust; and whereas the said Edward Atkinson hath declined and renounced, and hereby declines and renounces, the said trust; and whereas it appears to the satisfaction of the executor of said will that by retaining for the present the management and control of the lands in Union county, Kentucky, he can, out of the rents and profits thereof, probably pay off and discharge to the satisfaction of the creditors the balance of the debts remaining unpaid, and also carry out the provisions of said will in the other matters directed to be done; and whereas the devisees under said will have given to the said executor satisfactory pledge of the rents and profits of their several shares to indemnify him against loss and to secure him the means for paying any balance of said debts; and whereas the said trustees did heretofore, viz., on the — day of December, 1882, divide the said real estate (except the land in Union county aforesaid) into four equal shares, as di-
1183 rected by said will, and did then draw lots for the several shares, in which allotment there fell to the said trustees for Mary T. Duncan the several tracts, parcels, and lots of land hereinafter described: Now, therefore, by the authority of said will and in pursuance thereof, the said parties of the first part do hereby grant and convey unto the said John C. Atkinson, trustee for the said Mary T. Duncan, the following-described property, viz: 1. Lot No. 4 in the division of said decedent's farm in the Evansville (or Horseshoe) bend, in Henderson county, Kentucky, bounded as follows: Beginning at a stake in the middle of the leading bayou in Dr. J. H. Harding's line and corner to lot No. 3, running thence with the line of lot No. 3 S. 60¼° W. (passing at twelve poles a stake at the end of the present turn-row), in all 189 poles, to a stake on a ridge in the Stanley line and corner to lot No. 3; thence with the Stanley line S. 46½° E. 166 poles and 12 links — hickory (hackberry) and box elder (gone), 3 small elms and a small ash, marked to preserve the corner, and corner to Stanley; thence N. 31¼° E., passing at 95 poles and 10 links a stake in Dr. Harding's turn-row at the Evansville bend, in all 112 poles, to a stake, where the King deed (see Deed Book J, page 323) calls for an ash and elm in the leading bayou; thence with the original channel of the leading bayou N. 6° W. 18 poles, N. 10° E. 16
1184 poles, N. 38° W. 6 poles, N. 9° W. 20 poles, N. 31° W. 10 poles, to the present channel of the bayou; thence with the same N. 2° E. 42 poles, N. 18° W. 6 poles to the beginning, containing 114¾ acres of land, 107 acres thereof being cleared. (2.) Lot No. 3 in the division of said decedent's farm, on Green River Island, in Henderson county, Kentucky, bounded as follows, viz: Beginning at a stake in the State line between Indiana and Kentucky, as lo-

cated by Commissioners D. N. Walden and A. Pfafflin in the year 1875, and corner to lot No. 2, running thence S. 36¼° W. 266 poles to a post at the foot of the original bank of the island, corner to lot No. 4; thence at right angles to the course of the stream of the Ohio river and corner to lot No. 2; thence up said river with the line of low-water mark S. 21½° W. 71 poles and 21 links, N. 35¾ W. 69 poles and 21 links, to a stake at low-water mark in said Ohio river and corner to lot No. 4; thence at right angles to the course of said river N. 54¼° E. 50 poles to a post at the foot of the original bank of the island and corner to lot No. 4; thence N. 20 E. 312 poles to a stake in the original line of the tract on the north side of the bayou and corner to lot No. 4; thence with said original line N. 4¼° E. 20 poles to a stake in the line between the States of Kentucky and Indiana, as located by the commissioners aforesaid in the year 1875, from which stake an elm two
1185 feet in diameter bears 71° W., distant 12 links, and a cotton-wood six feet in diameter, having a sycamore 18 inches in diameter growing from its upper side, bears S. 4¼° W., distant one pole and one link; thence with said State line N. 38¾ W. 20 poles to the beginning, containing 156¼ acres, more or less; but it is expressly agreed and covenanted that John C. Atkinson, the owner of lot No. 4, his heirs and assigns, shall forever have the right to a roadway, with compensation, along the original line aforesaid from the said corner 20 poles distant from the said stop line to said State line for purposes of passing between said lot No. 4 and the road, in the State of Indiana. (3.) A certain lot and parcel of land lying in the city of Henderson, on the south side of Second street, bounded as follows: Beginning in the line of said Second street at the corner of the storehouse allotted to George M. Atkinson and M. Frances Atkinson and running thence with the line of said street N. 71° W. 24 feet 3¾ inches to a stake, corner to the lot allotted to Edward Atkinson; thence at right angles 134 feet to a stake in the line of an alley; thence with the line of said alley S. 71° E. 24 feet 3¾ inches to a stake, corner to said Geo. M. and M. F. Atkinson; thence at right angles 134 — to the beginning, together with the right and franchise to use the wall of said storehouse in the con-
1186 struction of any building which may be erected on the lot hereby conveyed. (4.) A certain lot and parcel of land lying in the city of Henderson on the north side of Second street and bounded as follows: Beginning at a stake the northeast corner of Second and Water streets and running thence with the line of Water street 92 feet 7 inches to the line of the alley next Woodruff Hall; thence with the line of said alley 22 feet 4¼ inches to a stake, corner to Edward Atkinson's lot; thence with the line of said lot 92 feet 7 inches to a stake in the line of Second street; thence with the line of Second street 22 feet 4¼ inches to the beginning. (5.) A certain lot or parcel of land lying in the city of Henderson, lying on the east side of Water street between Third and Fourth streets, and bounded as follows: Beginning at a stake in the line of Water street, corner to the Henderson Woolen Mills lot, and running thence with the line of the Woolen Mills lot and

Edward Atkinson's lot 200 feet to a stake in the line of an alley 12 feet wide; thence with the line of said alley 115 feet to a stake in the line of an alley next the Lambert lot; thence with the line of the alley last named 200 feet to a stake in the line of Water street; thence with the line of Water street 118 feet to the beginning. (6.)

1187 A certain lot and parcel of land lying in the said city of Henderson, on the east side of Main street between 9th and 10th streets, bounded as follows, viz.: Beginning at the northeast corner of Main and 9th streets and running thence with the line of Main street 266 feet 3⅗ inches to a stake, corner to the lot of Geo. M. and M. F. Atkinson; thence with the line of their lot 200 feet 2½ inches to a stake in the line of an alley 16 feet wide; thence with the line of said alley 226 feet 3⅗ inches to a stake in the line of 9th street; thence with the line of 9th street 200 feet 2½ inches to the beginning. (7.) A certain lot and parcel of land in the city of Henderson, lying on the south side of 10th and the west side of Elm streets, and bounded as follows: Beginning at the southwest corner of said streets and running thence with the line of Elm street 104 feet and one inch to a stake, corner to Edward Atkinson's lot; thence with the line of his lot 200 feet 2½ inches to a stake in the line of an alley 16 feet wide; thence with the line of said alley 104 feet and one inch to a stake in the line of 10th street; thence with the line of said 10th street 200 feet 2½ inches to the beginning. (8.) A certain tract and parcel of land lying in the county of Henderson and

1188 known as the decedent's "Canoe Creek Farm," situated about three miles below the city of Henderson, on the Morganfield road, and containing 118¼ acres, being the same land conveyed to said decedent in several parcels, as follows, viz: By John H. Speidel and wife by deed of date July 25th, 1834, recorded in Deed Book G, at page 461, in the Henderson county clerk's office; by A. S. Grigsby and wife by deed of date March 28th, 1840, recorded in said office in Deed Book I, at page 483; by James Rouse and wife by deed — date Sept. 25th, 1840, recorded in said office in Deed Book J, at page 459; and by W. D. Allison, commissioner of the Louisville chancery court, by deed of date February 16, 1848, recorded in said office in Deed Book M, at page 147; to have and to hold unto him and his successors in trust and for the separate use and benefit of the said Mary P. Duncan, wife of Blanton Duncan, free from her debts or the debts of her present or any future husband, for and during her life, with remainder at her death to such children of said Mary T. Duncan and their descendants (if any) as may survive her, as provided by said will, with covenant of such warranty as the said parties of the first part are by said will empowered to make, and no other.

In testimony whereof the said parties of the first part have hereto set their hands this 9th day of January, A. D. 1883.

EDWARD ATKINSON, [SEAL.]
WM. J. MARSHALL, [SEAL.]
Trustees of Aforesaid.

1189 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that this deed from Edward Atkinson and Wm. J. Marshall, trustees, to John C. Atkinson, trustee, was this day acknowledged before me in my office by the said Edward Atkinson and Wm. J. Marshall to be their act and deed, and the same is, with this certificate, truly recorded in my office. Witness my hand this 9th day of January, 1883.

GEO. W. SMITH, *C. H. C. C.*,
By THOS. H. BEVERLY, *D. C.*

No. 69.

This indenture, made and entered into this 21st day of October, 1887, between Leonidas W. Coleman, a widower, of Clements, Kansas, of the first part, and John B. Mallory and Sarah G. Mallory, his wife, of Henderson, Kentucky, of the second part, witnesseth: That whereas there is now pending in the Henderson circuit court a certain suit in equity by the said Mallory and wife as plaintiffs against the said Coleman and others, wherein the plaintiffs claim and seek to recover a portion of a certain tract of land on Green River Island, in Henderson county, Ky., as well as mesne profits for five years before the commencement of said suit; and
1190 whereas, in settlement and compromise of said suit, said Mallory and wife have this day conveyed, released, and quitclaim- to said Coleman the lower part of said tract, containing 104.80 acres, and all claims for rents: Now, therefore, in consideration thereof, the said Leonidas W. Coleman, widower, doth hereby quitclaim, release, and convey unto the said John B. Mallory and Sarah G. Mallory, his wife, all his right, title, and interest in and to the certain tract and parcel of land lying in Henderson county and State of Kentucky near the foot of Green River Island, and bounded as follows: Beginning at a stake at low-water mark in the Ohio river, a corner to the land of Edward Atkinson, from which stake the stack of the Evansville water-works bears N. 11¼° E., the iron smoke-stack of Armstrong's furniture factory bears N. 9° 40′ W., and the base of a large sycamore in the main Kentucky shore bears S. 81½° W. (bearings taken October 20th, 1887, at 9 o'clock a. m. by the magnetic meridian), running thence at right angles to the thread of the stream of the Ohio river N. 86½° E. 17.28 chains to a stake at the foot of the original bank of the island; thence N. 52½° E. (passing at 2.50 chains a stake where a maple and three willows and cotton-woods, the original corner of the Robert Terry warrant for 49 acres, stood, but which are now down and gone, and
1191 passing, at 25.50 chains, a point on the original bank of the bayou where an elm & hackberry & box elder, the beginning corner of said warrant, stood, but which are now down and gone, in all 33 chains), to a stake in the middle of the present channel of the bayou, a corner to the land of Edward Atkinson (a cotton-wood 8 inches in diameter bears S. 31¼ west, distant 80 links); thence down

the middle of the present channel of the bayou N. 34° W. 8 chains, N. 45½° W. 69 links, to a stake in the middle of the present channel of the bayou, corner to L. W. Coleman's land; thence S. 52½ W. 24.50 chains to a stake on the original river front of the island, and corner to L. W. Coleman's land; thence S. 86½ W. 16.50 chains to a stake at low-water mark on the Ohio river; thence up with the line of low-water mark of the Ohio river, as it meanders, S. 18½ W. 2.22 chains, S. 2¼° W. 9.55 chains, to the beginning, containing 45 acres; to have and to hold unto them and their heirs forever, free from any claim of the said grantor, with covenant of special warranty.

In witness whereof the said L. W. Coleman hath hereunto set his hand this 21st day of October, A. D. 1887.

LEONIDAS W. COLEMAN.

1192 STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed from L. W. Coleman to J. B. Mallory & wife was this day produced to me, in my office, and acknowledged by L. W. Coleman to be his act and deed, and the same is, with this certificate, truly recorded in my office.

Given under my hand this 21st day of October, 1887.

GEO. W. SMITH, *Clerk.*

No. 70.

This indenture, made this 10th day of February, 1886, between Joseph Cox and Martha J. Cox, his wife, and Elizabeth Philips, of the first part, and Lemuel Stansberry, of the second part, witnesseth: That whereas heretofore, to wit, Wm. H. Phillips and Lewis N. Philips each conveyed their undivided one-fourth interest in the tract of land hereinafter described to Lemuel Stansberry; that Nancy C. Philips, who intermarried with Henry Angle, conveyed with him her one-fourth interest to said Stansberry, and Elizabeth conveyed her one-fourth interest to said Angel, and he and wife conveyed same to said Stansberry, and that all the purchase-money has been paid; and whereas said deeds were improperly acknowledged and said Wm. H. and Lewis N. Philips and

1193 Nancy Angel have departed this life leaving no children, and said Henry has departed this life leaving no child, except Martha J. Cox, wife of Jas. Cox: Now, in consideration of the premises and for the purpose of perfecting the acknowledgements to said deeds, the said first parties hereby quitclaim, relinquish, release, and convey unto said second party whatever interest they may have in said land which is situated upon Green River Island, Henderson county, State of Kentucky, and which is bounded as follows, viz: Beginning at the lower corner of a tract of 100 acres, conveyed by Levi Jones to Jno. Garrett, on the banks of the Ohio river, running thence along Garrett's lower line to a bayou at said Garrett's corner; thence down along the bank of said bayou to a point from whence is a line drawn parallel with said Garrett's lower

line to the Ohio river, from thence to the point of beginning, containing 60 acres, and is the same land conveyed by Levi Jones to Austin Philips by deed of date Oct. 29, 1841, recorded in Deed Book "L," page 225. Henderson county clerk's office; to have and to hold unto the said second party, his heirs and assigns, forever, with covenant of special warranty only.

Witness the hands of said first parties the day and year first above written.

JOSEPH B. COX.
MARTHA J. COX.
ELIZABETH W. PHILIPS.

1194 STATE OF INDIANA, } ss:
County of Vanderburgh, }

Before me, Rans Clay Wilkinson, a notary public in and for said county and State, personally came Joseph B. Cox and Martha J. Cox, his wife, and Elizabeth Philips (unmarried), and each and every one signed said deed as their free act and deed, and the said notary public do- certify that this instrument of writing from Elizabeth Philips, Joseph B. Cox, and Martha J. Cox, his wife, was this day produced to me by the parties, and which was acknowledged by the said Joseph B. Cox to be his act and deed, and the contents and effects of the instruments being explained to the said Martha J. Cox by me, separately and apart from her said husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office this the 16th day of Feb'y, 1886.

[SEAL NOTARY PUBLIC.] R. C. WILKINSON,
Notary Public.

STATE OF INDIANA, } ss:
County of Vanderburgh, }

1195 I, Charles T. Jenkins, clerk of the circuit court in and for the county and State aforesaid, the same being a court of record, do hereby certify that Rane Clay Wilkinson, whose name is subscribed to the quitclaim deed — the annexed instrument, was at the time of making such deed an acting notary public within and for the county aforesaid, duly commissioned, qualified, and authorized to take the same; and, further, that I am acquainted with the handwriting of said R. C. Wilkinson, and that the said signature purporting to be his is true and genuine and the said instrument executed in accordance, whereof I have hereunto set my hand and affixed the seal of said court this sixteenth day of February, 1886.

[Seal Vanderburgh, Indiana Circuit.]

CHARLES T. JENKINS, *Clerk.*

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed was this day lodged in my office for record and that — have recorded it; the same, together with this and the foregoing certificates thereon endorsed, have been truly recorded in my office.

Given under my hand this Feb'y 18th, 1886.

GEO. W. SMITH, *Clerk,*
By T. H. BEVERLEY, *D. C.*

1196 No. 71.

This indenture, made and entered into this 27th day of Dec., 1887, between John B. Mallory and Sarah G. Mallory, his wife, of the first part, and H. F. Turner and R. H. Cunningham, of the second part, all of the city of Henderson and State of Kentucky, witnesseth: That whereas the said Mallory and wife, of the first part, are justly indebted to said H. F. Turner and R. H. Cunningham, of the second part, in the sum of one thousand dollars for legal services in the suit lately pending in the Henderson circuit court by said Mallory and wife against Elkins and others: Now, therefore, in consideration of said sum and in payment and satisfaction of said debt, the said John B. Mallory and Sarah G. Mallory, his wife, have granted, bargained, sold, and conveyed, and do hereby grant, bargain, sell, and convey, unto the said H. F. Turner and R. H. Cunningham one undivided half part of and interest in the certain tract and parcel of land situate and lying on Green River Island and near the foot thereof in Henderson county, Kentucky, and bounded as follows, viz: Beginning at a stake at low-water mark in the Ohio river, a corner to the land of Edward Atkinson, from which stake the stack of the Evansville water-works bears N. 11¼ E., the iron smoke-stack of Armstrong's furniture factory bears N. 9° 40′ west, and the base of a large sycamore on the main Kentucky shore bears S. 81½° W.
1197 (bearings taken Oct. 20th, 1887, at 9 o'clock a. m. by the magnetic meridian), running thence at right angles to the thread of the stream of the Ohio river N. 86½° E. 17.28 chains to a stake at the foot of the original bank of the island; thence N. 52½, passing at 2.50 chains a stake where a maple and three willows and cotton-woods, the original corner of the Robert Terry warrant for 49 acres, stood, but which are now down and gone, and passing at 25.50 chains a point on the original bank of the bayou where an elm & hackberry & box elder—the beginning corner of said warrant—stood, but which are now down and gone, in all 33 chains, to a stake in the middle of the present channel of the bayou, a corner to the land of Edward Atkinson (a cotton-wood 8 inches in diameter bears S. 31¼ west, distant 80 links); thence down the middle of the present channel of the bayou N. 34° W. 8 chains, N. 45½ W. 69 links, to a stake in the middle of the present channel of the bayou, corner to L. W. Coleman's land; thence S. 52½ W. 24.50 chains to a stake on the original river front of the island, and corner to L. W. Coleman's

land; thence S. 86½ W. 16.50 chains to a stake at low-water mark on the Ohio river; thence up & with the line of low-water mark of the Ohio river, as it meanders, S. 18½ W. 2.22 chains, S. 2¼ W. 9.55 chains to the beginning, containing 45 acres; to have and to
1198 hold each an undivided fourth part of and interest in said tract of land unto them, the said H. F. Turner and R. H. Cunningham, and their respective heirs and assigns forever, with covenant of special warranty. In witness whereof the said Jno. B. Mallory and Sarah G. Mallory hereunto set their hands the date first above written.

JNO. B. MALLORY.
S. G. MALLORY.

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, Geo. W. Smith, clerk of the Henderson county court, do certify that the foregoing deed from Jno. B. Mallory and Sarah G. Mallory, his wife, to Turner & Cunningham was on the 27th day of December, 1887, acknowledged before me, in my county, by the said Jno. B. Mallory to be his act and deed, and on the 29th day of December by S. G. Mallory to be her act and deed, and the same is, with this certificate, truly recorded in my office.

Given under my hand this 29th day of December, 1887.

GEO. W. SMITH, *Clerk.*

1199 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, G. W. Smith, clerk of the county court in and for the county and State aforesaid and keeper of the seal and records thereof, do certify that the foregoing copies of the commissioner's report of the dividing line between the States of Indiana and Kentucky, at Green River Island, and copies of deeds, numbered from 1 to 71, from the following parties to grantees, viz:

No. 1. From John Slayden to James McClain.
" 2. " James Slayden to Clifton R. Slaton.
" 3. " Clifton Slaton to Geo. Bohall.
" 4. " Geo. Bohall to James McClain.
" 5. " John Slaton to Burney Hancock.
" 6. " Nancy Terry to Eggleston Matthews.
" 7. " Egleston Matthews to Hurley & Phillips.
" 8. " Nancy Terry to Eggleston Matthews.
" 9. " Eggleston Matthews to James McClain.
" 10. " Burney Hancock to James McClain.
" 11. " Laura McCallister to Rinaldo A. Barnett.
" 12. " Henderson J. Barnett to Abram Franceway.
" 13. " John Parker to Jackson McClain.
" 14. " John Parker to Austin Phillips.
" 15. " Jesse Lane to John Garrett.
" 16. " Burney Hancock to John Garrett.
" 17. " Levi Jones to John Garrett.

No. 18. From Levi Jones to Abram Franceway.
1200 " 19. " Levi Jones to Thomas Towles, Sr.
" 20. " Levi Jones to Austin Phillips.
No. 21. From Levi Jones to Eneas M. Barnett.
" 22. " Writ of Possession to Levi Jones.
" 23. " Levi Jones to John Stanley.
" 24. " A. M. Barnett to Phillip Crow.
" 25. " J. Z. Frields to J. McClain.
" 26. " Philip Crow to Moses Aikin.
" 27. " John Garrett to Corydon Garrett.
" 28. " Moses Aiken to William Yates.
" 29. " Jackson McClain to James McClain.
" 30. " Sarah Yates to Corydon Garrett.
" 31. " John Franceway to Corydon Garrett.
" 32. " Willie Sugg to Corydon Garrett.
" 33. " Henry Dixon Green to R. B. Atkinson.
" 34. " William Green to R. B. Atkinson.
" 35. " Geo. W. Yates to Corydon Garrett.
" 36. " Gabriel G. Green to Henry D. Green.
" 37. " Corydon Garrett to Wilda Stansberry.
" 38. " H. D. Terry to Horace Dunham.
" 39. " John E. McCallister to James McClain.
" 40. " Same to Jackson McClain.
" 41. " J. M. Stone, com., to Corydon Garrett.
" 42. " Corydon Garrett to Wilda Stansberry.
" 43. " Corydon Garrett to Wilda Stansberry.
" 44. " William H. Phillips to Lemuel Stansberry.
No. 45. From Louis N. Phillips to Lemuel Stansberry.
1201 " 46. From Ann Matthews to Jackson McClain.
" 47. " Com'r Shouse to W. P. McClain.
No. 48. From Com'r Geo. A. Sugg to George Atkinson.
" 49. " Henry Angell to Lemuel Stansberry.
" 50. " Henry Angel to Lemuel Stansberry.
" 51. " David Elkins to Elemuth Stansberry.
" 52. " Y. E. Allison, com'r, to Geo. W. Yates.
" 53. " Thomas Hampton to Geo. W. Yates.
" 54. " Thomas D. Yates to Geo. W. Yates.
" 55. " David Elkins to Wilda Stansberry.
" 56. " Elizabeth W. Phillips to Henry Angel.
" 57. " Wilda Stansberry to W. H. Stansberry.
" 58. " Edward Atkinson to John C. Atkinson.
" 59. " Julius A. Coleman to L. W. Coleman.
" 60. " W. P. McClain to Christian Meyer.
" 61. " Corydon Garrett to Dave Elkins.
" 62. " Jackson McClain to Ann Matthews.
" 63. " Atkinson & Marshall to Edw'd Atkinson.
" 64. " Atkinson & Marshall to Geo. M. Atkinson.
" 65. " Geo. W. Yates to John B. Baird.
" 66. " John B. Baird to Susannah Yates.
" 67. " S. A. Young, com'r, to Chas. H. Brenninger.
" 68. " Edward Atkinson to Mary T. Duncan.

No. 69. From L. W. Coleman to John B. Mallory.
" 70. " John B. Cox to Lemuel Stansberry.
" 71. " John B. Mallory to Turner & Cunningham—

1202 are true and complete copies of said commissioner's report & deeds, as appears of record in the Henderson county clerk's office.

Witness my hand and official seal this 1st day of October, 1888.

[SEAL.] GEORGE W. SMITH, *Clerk.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, John F. Lockett, presiding judge of the Henderson county court, do certify that George W. Smith, whose genuine signature appears to the foregoing certificate, is the clerk of the Henderson county court, duly qualified and acting clerk, and his official acts as such are entitled to full faith and credit; and I further certify that his certificate is in due form of law.

Witness my hand this 1st day of October, 1888.

JNO. F. LOCKETT, *P. J. H. C.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, George W. Smith, clerk of the county court in and for the county and State aforesaid, do certify that John F. Lockett, whose genuine signature appears to the foregoing certificate, is the present acting, duly commissioned, and qualified presiding judge of the Henderson county court, & his certificate is in due form of law.

Witness my hand and official seal this 1st day of October, 1888.

GEORGE W. SMITH, *Clerk.*

Fee for the transcript, $72.00.

1203 Mr. CUNNINGHAM: I will also offer in evidence a certified copy of the depositions of Abram Franceway, Edmund Talbot, John E. McCallister, and Willie Sugg in the case of John E. Garrett *vs.* Jackson McClain *et al.*, in the Henderson circuit court, to be attached to the testimony. It may be marked as Exhibit No. 27.

The said paper being in the words and figures following, to wit:

1204 The deposition of Abraham Franceway, taken at the office of Young E. Allison, in the town of Henderson, on the 7th day of November, 1843, agreeably to the notice hereto annexed, to be read as evidence on behalf of the defendants in a certain suit in chancery depending in the Henderson circuit court, wherein John Garrett is complainant and Levi Jones, James Rouse, & Jackson McClain are defendants.

The deponent, being of lawful age and first duly sworn, deposeth and saith:

Ques. by defendant. Were you or were you not present when John

Garrett, the complainant, purchased the land in controversy in this suit? If so, state whether or not the complainant, Garrett, did or did not know all about the title of Levi Jones before he purchased the aforesaid land from him. State all you know about the Green River Island.

Answer. I was present when the complainant, Garrett, purchased of Levi Jones the land in controversy in this suit, and know that the complainant, Garrett, knew all about the title of said Jones to the land before he bought it. He states that Garrett employed Amos Clark, Esq., a lawyer, to examine Jones' title, and that Clark, in the presence of this deponent & Garrett, interrogated Jones par-
1205 ticularly about his title to the land, and Garrett stated that he was fully satisfied with Jones' title. It was well known to Garrett that Jones had only an equitable title to said land. This deponent states that he purchased land of Jones at the same time, & a part of the same tract or survey that the land Garrett purchased. He states that Jones fully stated to this deponent and Garrett all about his title to the land he sold this deponent & the land he sold to said Garrett. This deponent saith that Jones claimed to hold the land under an equitable title from one Slaughter. He states that the land lies on Green River Island, in the county of Henderson, Kentucky. The deponent further states that it is about fifty years since his father moved to this county, & he came with him, a small boy. Most of the time since I have lived in this county. It is about forty years since I first settled on Green River Island, and have lived there all the time since, with the exception of some short intervals, and at that time it was said to be in Henderson county. The citizens of the island always voted in Henderson county and paid their taxes in this county. Deponent further states that some years after he had settled on Green River Island keel-boats and barges passed up and down the channel north of said island, and
1206 he distinctly recollects one steamboat passed the said northern channel. The channel, or that part of the Ohio river, was, I think, at least two hundred yards wide then, with steep, bluff banks all the way around on the northern side clear up to the head of the island, and there was no growing timber in the channel, and no obstructions of any kind in the said northern channel for many years after I knew it, only such as originated from extreme low water; and further this deponent saith not.

his
ABRAHAM x FRANCEWAY.
mark.

Also the deposition of Edmond Talbott, taken at the same time and place and for the same purpose as the foregoing deposition of Abraham Franceway.

The deponent, being of lawful age and first duly sworn, deposeth & saith that it is about forty-seven years since I first became acquainted with Green River Island. It was then called an island belonging to Kentucky. In 1799, June, Henderson county was stricken off from Christian and erected into a separate county. I was the

first surveyor ever appointed in Henderson county, and have been county surveyor ever since. I have surveyed the whole of Green River Island, and know that it has always been called and
1207 does belong to Kentucky, and no other State has, to my knowledge, ever set up any claim to or claimed jurisdiction over the said island. When I first was acquainted with the island the channel or bed of the Ohio river on the north side of the island was not less than 150 or 200 yards wide. There was no obstructions, such as timber growing on it or drift-wood choking it up, for boats & water-crafts frequently passed up and down the river on that side of the island; and further this deponent saith not.

EDMOND TALBOT.

HENDERSON COUNTY, *set:*

The foregoing depositions of Abraham Franceway, Aneas M. Barnett, & Edmond Talbott were this day taken, subscribed, and sworn to before the undersigned, a justice of the peace for said county, by the said Abraham Franceway, Aneas M. Barnett, & Edmond Talbott at the time and place & for the purpose stated in the caption thereof.

Given under my hand this 7th day of November, 1843.

Y. E. ALLISON.

The deposition of John E. McCallister, taken at the office of Y. E. Allison on Monday, the 26th day of February, 1844, agreeable to the notice hereto annexed, to be read as evidence on the part of the defendants in a suit in chancery now depending in
1208 the circuit court for Henderson county, wherein John Garrett is complainant & Levi Jones, James Rouse, — Jackson McClain are defendants.

The deponent, being lawful age and first duly sworn, deposeth & saith that he had frequent conversations with the complainant, Garrett, before he compromised & purchased the land on the Green River Island in controversy in this suit, and he is well aware that Garrett was well advised as to Jones' title to the land aforesaid. He states that he heard Garrett speak frequently about Jones' title before he made the purchase of the land aforesaid from Jones, and that Garrett understood fully before he purchased the nature and extent of Jones' title. He further states that the State of Kentucky has always exercised jurisdiction over Green River Island, the land being surveyed and patented under warrants from Kentucky, and that the people on the island have always paid taxes in Kentucky & mustered in Kentucky, & that the State of Kentucky (& in no other State) has exercised or claimed jurisdiction over the island aforesaid. He further states that as late as 1815 or so he had seen steamboats passing through the island shoot; and further this deponent saith not.

JOHN E. McCALLISTER.

1209 Also the deposition of Willis Sugg, taken at the same time & place and for the same purpose as the foregoing deposition of John E. McCallister.

The deponent, being of lawful age and first duly sworn, deposeth & saith that he has resided in this county for near forty-four years, and has been a deputy surveyor for said county for about forty-one years. As early as 1804 I surveyed in Green River Island, and have lived in this county ever since the year 1800, and in all that time he has never heard of any State or county setting up any claim to jurisdiction over Green River Island except the State of Kentucky. The citizens on the — vote and pay taxes in Kentucky, and are called and exercise all the rights of citizens of Kentucky, so far as he knows or believes; and further this deponent saith not.

WILLIS SUGG.

HENDERSON COUNTY:

The foregoing depositions of John E. McCallister & Willis Sugg were this day taken, subscribed, & sworn to by the said McCallister & Sugg before the undersigned at the time & place & for the purpose mentioned in the captions thereof.

Given under my hand this 26th day of February, 1844.

Y. E. ALLISON, *J. P.*

Justice's fee for taking this deposition, $1.00.

1210 STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, S. A. Young, clerk of the Henderson circuit court, the same being a court of record in and for the State & county aforesaid, do certify that the foregoing six pages, this included, contain a full, true, & complete copy of the depositions of Abraham Franceway, Edmond Talbott, John E. McCallister, & Willis Sugg, taken in the case of John Garrett against Jackson McClain, &c., as found on file in my office, with the record of said case numbered (off the docket 7352).

[SEAL.] Given under my hand and seal of office this the —st day of Oct., 1888.

S. A. YOUNG, *C. H. C. C.*

STATE OF KENTUCKY, } *sct:*
Henderson County, }

I, M. C. Givens, presiding judge of the circuit court for Henderson county, do certify that S. A. Young, whose genuine signature appears to the foregoing certificate, is and was at the date of said signature the duly elected and qualified clerk of the Henderson circuit court, and all his official acts are worthy of full faith & credit, and said attestation is in due form of law.

Given under my hand this 1st day of Oct., 1888.

[SEAL.] M. C. GIVES,
Judge of Henderson Circuit Court

1211 STATE OF KENTUCKY, } sct:
Henderson County, }

I, S. A. Young, clerk of the Henderson circuit court, the same being a court of record in and for the State and county aforesaid, do certify that Hon. M. C. Givens, whose signature appears to the foregoing certificate, was & is the duly elected, qualified, & sole presiding judge of the Henderson circuit court.

Given under my hand and seal of office this the 1st day [SEAL.] of Oct., 1888.

S. A. YOUNG,
Cl'k Henderson Circuit Court.

1212 Mr. CUNNINGHAM: I will also hand to the notary, to be attached to the testimony, an exemplified copy from the records of Henderson county, Kentucky, showing the assessments of land on Green River Island for taxation in Henderson county, in whose name the same were assessed, the number of acres assessed against each, and the assessed value thereof. It may be marked as Exhibit No. 28.

The paper above referred to being in the words and figures following, to wit:

1213 *Assessment of Lands on Green River Island for Taxation in Henderson County, Kentucky, as Shown by the Tax Books of said County, Made Out and Transmitted to the Auditor of Public Accounts of said State and Now on File in His Office, as Required by Law.*

Copied from the tax book for the year 1819.

Names.	Number of acres.	Location.	Value.
Slayden, John	400	Green River Island	$2 per acre.

Copied from the tax book for the year 1821.

McCallister, Enace	120	Green River Island	2 per acre.
Slayden, John	400	Green River Island	2 per acre.

Copied from the tax book for the year 1824.

Slayden, Clifton	100	Green River Island	1 50 per acre.

Copied from the tax book for the year 1825.

McCallister, Enace	220	Green River Island	4 per acre.
Terry, Robert	340	Green River Island	4 per acre.

Copied from the tax book for the year 1834.

Matthews, Eggleston	240	Green River Island	2 per acre.
McCallister, Susan C.	85	Green River Island	2 per acre.

1214 Copied from the tax book for the year 1836.

Names.	Number of acres.	Location.	Value.
Green, Wm.	200	Green River Island	$5 per acre.
Lane, Jesse	150	Green River Island	6 per acre.
Matthews, Eggleston	240	Green River Island	10 per acre.
McCallister, Miss Lauren	90	Green River Island	2 per acre.
McClain, James	351	Green River Island	8 per acre.

Copied from the tax book for the year 1837.

McClain, James	351	Green River Island	10 per acre.

Copied from the tax book for the year 1838.

Barnett, Henderson J.	330	Green River Island	300
Barnett, Æneas M.	130	Green River Island	1,040
Barnett, Rinaldo	80	Green River Island	400
Matthews, Eggleston	240	Green River Island	2,400
McClain, James	351	Green River Island	3,510

Copied from the tax book for the year 1839.

Franceway, Abraham	50	Green River Island	500
Garret, John	120	Green River Island	1,200
Green, Wm.	200	Green River Island	2,000
Matthews, Eggleston	200	Green River Island	2,000
McClain, James, est.	350	Green River Island	3,500
1215 McClain, Jackson	100	Green River Island	1,500
Terry, Mrs. Nancy	49	Green River Island	200

Copied from the tax book for the year 1840.

Franceway, Abraham	50	Green River Island	500
Matthews, Eggleston	240	Green River Island	2,500
Phillips, Austin	70	Green River Island	1,000

Copied from the tax book for the year 1841.

Garret, John	120	Green River Island	1,300
Matthews, Eggleston	240	Green River Island	3,600
Terry, Mrs. Nancy	50	Green River Island	500

Copied from the tax book for the year 1842.

Barnett, Æneas M.	130	Green River Island	1,200
Matthews, Perry, adm'r E. Matthews.	240	Green River Island	2,000
McClain, Jackson	100	Green River Island	1,000
McClain, Jackson, adm'r James McClain, dec'd.	350	Green River Island	3,500
Terry, Mrs. Nancy	49	Green River Island	300

1216 Copied from the tax book for the year 1844.

Franceway, Abraham	45	Green River Island	500
Garret, John	100	Green River Island	1,200
		Ohio,	
Green, Wm.	200	Green River Island	2,000
Matthews, Jos. P., adm'r E. Matthews, dec'd.	240	Green River Island	2,880
McClain, Jackson	100	Green River Island	1,200
		Ohio,	
Phillips, Austin	70	Green River Island	840
Terry, Nathaniel D.	24½	Green River Island	100

Copied from the tax book for the year 1845.

Names.	Number of acres.	Location.	Value.
Green, Wm.	200	Ohio, Green River Island	$2,000
McClain, Jackson, ex'r James McClain, dec'd.	350	Green River Island	4,200

Copied from the tax book for the year 1846.

Crow, Phillip	130	Ohio, Green River Island	1,560
Franceway, Mary Ann	50	Ohio, Green River Island	600
Garret, John	130	Green River Island	1,200
Matthews, Jos. P., adm. E. Matthews.	240	Green River Island	2,400
McClain, Jackson	100	Green River Island	1,200
McClain, Jackson, James & William.	350	Green River Island	4,200
Phillips, Mrs. Margaret	75	Ohio, Green River Island	900

1217 Copied from the tax book for the year 1848.

Franceway, Mrs. L.	40	Green River Island	800
Garret, Corydon	85	Green River Island	2,000
McClain, Jackson	229	Green River Island	4,000
Phillips, Mrs. Margaret	75	Green River Island	1,500
Terry, Nathaniel D.	49	Green River Island	100
Yates, Wm.	130	Green River Island	2,600

Copied from the tax book for the year 1849.

Garret, Corydon	200	Green River Island	3,500
Green, Wm.	210	Green River Island	1,260
McClain, James	260	Green River Island	5,200
McClain, Jackson	229	Green River Island	4,000
Matthews, Jos. P., adm'r E. Matthews.	240	Green River Island	3,600
Terry, Nathaniel D.	49	Green River Island	100
Yates, Wm.	130	Green River Island	2,000

Copied from the tax book for the year 1851.

Atkinson, Richard	130	Green River Island	1,040
Garret, Mrs. Mary	28	Green River Island	570
Garret, Corydon	200	Green River Island	4,000
Matthews, J. P., adm'r E. Matthews.	240	Green River Island	4,800
McClain, James	260	Green River Island	5,200
1218 McClain, Jackson	225	Green River Island	4,500
Terry, N. D.	40	Green River Island	200
Yates, Wm.	130	Green River Island	2,600
Yates, Geo. W.	50	Green River Island	1,000

Copied from the tax book for the year 1852.

Matthews, Perry, adm'r E. Matthews.	240	Green River Island	4,500

Copied from the tax book for the year 1854.

Names.	Number of acres.	Location.	Value.
McClain, Jackson	225	Green River Island	$4,500
Stansberry, Wilda	40	Green River Island	800
Yates, Geo. W.	48	Green River Island	950

Copied from the tax book for the year 1856.

Stansberry, Wilday	95	Green River Island	2,000

Copied from the tax book for the year 1858.

Atkinson, Geo.	426	Green River Island	8,000

Copied from the tax book for the year 1859.

Sammons, Wm.	157½	Green River Island	750

1219 Copied from the tax book for the year 1862.

Atkinson, Geo.	426	Green River Island	5,000
McClain, Jackson	611	Green River Island	9,500

Copied from the tax book for the year 1863.

Atkinson, Geo.	426	Green River Island	5,000
McClain, Jackson	611	Green River Island	18,330

Copied from the tax book for the year 1864.

Atkinson, Geo.	426	Green River Island	6,500

Copied from the tax book for the year 1865.

McClain, Jackson	611	Green River Island	15,000

Copied from the tax book for the year 1866.

Atkinson, Geo.	426	Green River Island	13,000

Copied from the tax book for the year 1867.

Atkinson, Geo.	426	Green River Island	8,000

1220 Copied from the tax book for the year 1868.

Atkinson, Geo.	426	Green River Island	8,000
Matthews, Jno. H., est.	90	Green River Island	2,500
Matthews, Jno. H., est.	90	Green River Island	2,500
McClain, Jackson	611	Green River Island	18,300

Copied from the tax book for the year 1869.

Angell, Henry	100	Green River Island	2,000
McClain, Jackson	611	Green River Island	18,000
Sammons, Wm., for 1868 & 1869	157	Green River Island	1,085

Copied from the tax book for the year 1874.

Yates, Geo., of Indiana	96	Green River Island	2,700

Copied from the tax book for the year 1875.

Atkinson, Geo.	426	Green River Island	6,390

Copied from the tax book for the year 1882.

Names.	Number of acres.	Location.	Value.
Atkinson, Geo., est.	446	Green River Island	13,380

1221 Copied from the tax book for the year 1885.

Atkinson, Miss Fannie	78½	Green River Island	1,650
Atkinson, Edward	100	Green River Island	2,500
Atkinson, Geo. M.	78½	Green River Island	1,550
Atkinson, Jno. C.	177	Green River Island	3,500
Atkinson, Jno. C., trustee M. F. Duncan.	156	Green River Island	3,300

COMMONWEALTH OF KENTUCKY, *sct:*

I, Fayette Hewitt, auditor of public accounts within and for the State of Kentucky, do certify that the foregoing statement showing the assessment of lands on Green River Island for taxation in Henderson county, in the State aforesaid, in whose names the same were assessed, the number of acres assessed against each, and the location and assessed value thereof, are true and perfect copies of the said assessments as they respectively appear on the tax books of said county for the several years above specified, made out and transmitted to my office as required by statute, where they are still on file and in my custody as auditor as aforesaid.

Given under my hand and seal of office, in the city of Frankfort, in the State aforesaid, this 29th day of September, 1888.

FAYETTE HEWITT, *Auditor.*

1222 STATE OF KENTUCKY, *Executive Department:*

I, S. B. Buckner, Governor of the State of Kentucky, do certify that Fayette Hewitt, whose genuine signature appears to the foregoing certificate, is and was at the time of signing the same auditor of public accounts within and for the State aforesaid, duly elected, commissioned, and qualified according to law; that this foregoing attestation is in due form and by the proper officer.

In testimony whereof I hereto sign my name and cause the great seal of the Commonwealth to be affixed. Done at Frankfort this 29th day of September, A. D. 1888.

[SEAL.] S. B. BUCKNER.

By the Governor:
GEO. M. ADAMS,
Secretary of State.

1223 STATE OF INDIANA, *Vanderburgh County:*

I, Harold Taylor, a notary public for the State of Indiana and an officer authorized to take depositions by the laws of the State of In-

diana, hereby certify that the above-named John C. Atkinson, witness, was first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in relation to said cause; that said deposition was reduced to writing by me; that the complainant was present by its counsel, Alpheus H. Snow, Esq., and that said deposition were [was] taken at the office of the clerk of the United States circuit court, in the city of Evansville, county of Vanderburgh, and State of Indiana, on the 28th day of September, 1888, between the hours of 10 o'clock a. m. and six o'clock p. m. of said day, and that the several exhibits herein appearing were by me duly attached hereto.

In testimony whereof I have hereunto set my hand and notarial seal this 1st day of December, A. D. 1888.

[Seal of Harold Taylor, Notary Public, Indiana.]

HAROLD TAYLOR,
Notary Public.

1224 (Endorsed:) Supreme Court of the United States. October term, 1888. No. 2, original. The State of Indiana *vs.* The State of Kentucky. Evidence for defendant. Filed February 6, 1889.

Presented by
Hon Wm A Peelle
Atty Gen'l of Indiana
August 1, 1897.

SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1889.

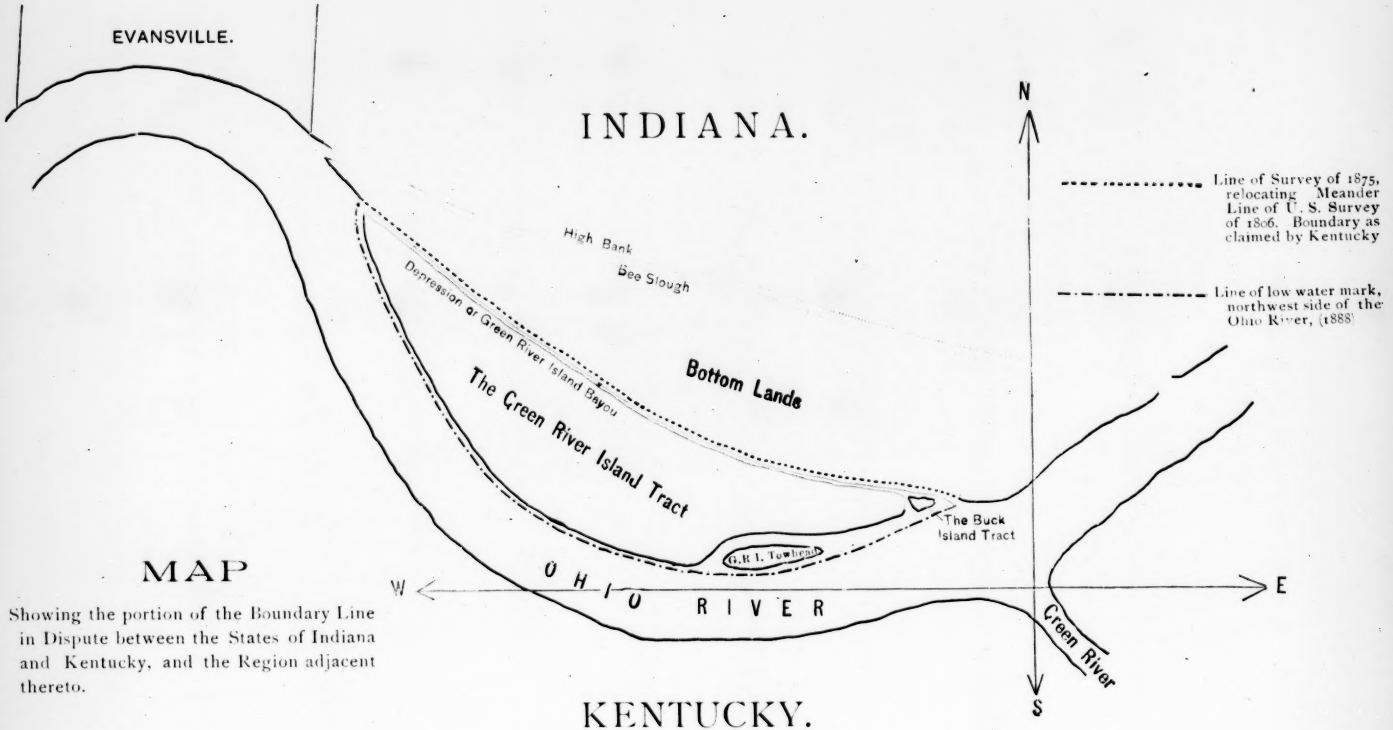
THE STATE OF INDIANA, *Complainant*, vs. THE STATE OF KENTUCKY.	No. 2 ORIGINAL. ACTION IN EQUITY.

BRIEF IN BEHALF OF COMPLAINANT.

BY ALPHEUS H. SNOW.

JOSEPH E. McDONALD,
JOHN M. BUTLER,
ALPHEUS H. SNOW,
Solicitors for Complainant.

FRANK H. SMITH, 22 N. PENN. ST.



MAP

Showing the portion of the Boundary Line in Dispute between the States of Indiana and Kentucky, and the Region adjacent thereto.

SUPREME COURT
OF THE
UNITED STATES.
OCTOBER TERM, 1889.

THE STATE OF INDIANA, *Complainant*, *vs.* THE STATE OF KENTUCKY.	No. 2 ORIGINAL. ACTION IN EQUITY.

BRIEF IN BEHALF OF COMPLAINANT.

STATEMENT.

I. *The Occasion and Object of the Action.* From a point on the northwest side of the Ohio river, about six miles above the city of Evansville, Indiana, to a point on the same side of the river about one-half mile above that city, the Ohio river curves toward Kentucky. Between these same points a depression or bayou exists which lies on nearly a straight line from one point to the other. The bottom of this depression is at present from twenty to thirty feet above low water-mark of the Ohio river.

There are some evidences that near the upper point, this depression, at some past period, divided into two at the river's edge, thus leaving a delta between the two depressions. Opposite the upper point, on the south (Kentucky) side of the Ohio river, the Green river flows into the Ohio.

The land lying between the depression and the Ohio river consists of two connected tracts, one called the "Green River Island" and the other the "Green River Island Tow-head,"—the latter being a tract formed by deposit which has within the last twenty or thirty years become attached to the "Green River Island" tract at all stages of water.

The land lying in the delta of the depression northeast of the "Green River Island" tract is called "Buck Island." The depression or bayou above referred to is called the "Green River Island Bayou."

Until the year 1875, it was generally supposed, in the vicinage, that the boundary line between the two States was the low water-mark of the Ohio river on its northwest side, but it was claimed by persons who purported to assert the claims of the State of Kentucky that the low water-mark of the Ohio river on the northwest side was the middle line of the "Green River Island Bayou," and of its northern branch at the point where the bayou divided, and that hence such middle line of the bayou was the boundary line between the two States.

A few persons who claimed under the State of Kentucky, and whose title deeds bounded their land at the State boundary line, claimed that the meander line of the United States survey of 1806, which ran along the top of the north (Indiana) bank of the "Green River Island Bayou," and upon the north (Indiana) bank of the north branch of the bayou where it divided, was the State boundary line.

In the year 1875 a survey was made for the purpose of locating the State boundary line between the two points above referred to, by Commissioners of the two

States, under peculiar circumstances hereafter to be discussed. This survey located the State boundary line upon the meander line of the United States survey of 1806.

The "Green River Island" tract is about five and one-half miles long, and a little over a mile wide at its greatest width, and tapers to a point at both ends. It contains nearly two thousand acres of land. The "Green River Island Tow-head" contains about one hundred acres. The "Buck Island" tract contains about fourteen acres. The narrow strip of land between the bayou and the line of the survey of 1875 contains about one hundred acres. The land is worth on the average fifty dollars an acre.

The owners of the land on the "Green River Island" tract deriving title from Virginia and Kentucky had, prior to 1875, been in dispute and conflict with the owners of the adjacent land in Indiana, deriving title from the United States, over the ownership of "Buck Island." After the survey of 1875, the trouble was much increased, on account of the doubtful state in which the title to the strip between the bayou and the line of the survey of 1875, was left.

Inasmuch as these disputes and conflicts had their origin in a dispute as to the State boundary, the State of Indiana, after having attempted to settle the boundary line by agreement with the State of Kentucky and failed, brought this suit for the purpose of obtaining a final settlement of all disputes by having the location of the State boundary line between the two points above referred to authoritatively settled.

II. *The Pleadings.* In the bill the State of Indiana alleges:

1. That by reason of its formation as a State, on the 11th day of December, 1816, with certain specified boundaries, and by reason of the formation of the State of Kentucky out of the Commonwealth of Virginia, on the 1st day of June, 1792, and by reason of the previous cession, on the 1st day of March, 1784, by the State of Virginia, of the Northwest Territory to the United States, the boundary line between the State of Indiana and the State of Kentucky became, and still is, the northwestern shore of the Ohio river as the same is defined by the low water-mark of the Ohio river.

2. That the low water-mark on the north or northwestern shore of the Ohio river is, and for more than twenty years has been, along the south or southwestern margin of the tracts above described as the "Green River Island" tract and the "Buck Island" tract.

3. That the State of Kentucky has wrongfully claimed, and is wrongfully claiming, that her jurisdiction extends over (*i. e.* to the northern or northwestern margin of) these tracts.

The prayer is that the Court may determine and settle the boundary with relation to the above mentioned tracts.

To the bill the State of Kentucky filed as a single document its answer and cross-bill, alleging:

1. That the boundary line is upon the north side of "Green River Island," because this tract of land was not ceded to the United States as a part of the Northwest Territory in 1783, but remained the property of Virginia after that cession, and was, by Virginia, conveyed to the State of Kentucky, when the State of Kentucky was formed on the 1st day of June, 1792.

2. That the State of Kentucky has continuously

asserted its sovereign rights and authority over said tract, and has granted title to the land to individuals, and collected taxes from them, and that the individuals residing upon the disputed territory have voted at the elections of the State of Kentucky, and that the Kentucky Courts have exercised jurisdiction, both civil and criminal, over the persons within the disputed territory, and over the disputed territory itself; and that the right of the State of Kentucky so to do has always been recognized and acquiesced in by the State of Indiana.

3. That "Buck Island" is an accretion to "Green River Island," and that, as such, the boundary line of the State of Kentucky runs on the north side of "Buck Island" in the same manner that it runs on the north side of "Green River Jsland."

4. That in 1875 the General Assembly of the State of Indiana enacted a statute which provided that Commissioners should be appointed to run a boundary line between the States of Indiana and Kentucky between the termini of the disputed territory; that the Commissioners should be governed in running that line by the survey originally made by the United States in 1806; and that after certain formalities relating to the survey had been complied with, the survey should be conclusive evidence in any Court in the State of Indiana of the boundary between the States of Indiana and Kentucky between the points on "Green River Island" indicated in that statute.

That Commissioners of the two States surveyed a line on the line of the survey made by the United States in 1806, and performed the formalities required by the statute, and that the statute was accepted by the State

of Kentucky, and that the line so surveyed became and is the true boundry line between the States.

The relief prayed for by this pleading in so far as it is a cross-bill, is, that the line of survey of 1806, as marked by the survey of 1875, may be held and adjudged to be the true boundary line between the States.

To the answer and cross-bill, the State of Indiana filed as a single document its general replication and its answer to the cross-bill.

In the answer to the cross-bill, the State of Indiana alleges:

1. That the boundary line is upon the south side of the "Green River Island" tract, because this tract of land was ceded to the United States as a part of the Northwest Territory in 1783, and formed a part of the territory over which sovereignty and jurisdiction were granted by the United States to the State of Indiana on the 11th day of December, 1816, when the State of Indiana was admitted into the Union.

2. That the State of Indiana has endeavored many times to exercise her right of sovereignty and jurisdiction over said tract, in so far as she could peacefully do so.

3. That if "Buck Island" be an accretion, it is an accretion to the land within the undisputed territorial limits of Indiana.

4. That the formalities required to be performed by the statute of 1875 were not performed; that the consent of Congress was never obtained to that statute and the proceedings thereunder; that, in the year 1877, that statute was repealed; and that the statute is void and of no effect.

III. *The Issues.* The issues raised by the pleadings, as determining the location of the boundary on one side or the other of the disputed tracts, are:

1. Did the words "on the south by of the Ohio river" in the resolution of Congress of December 11, 1816, admitting the State of Indiana into the Union, fix the southern boundary line of the State of Indiana on the southern margin of the "Green River Island" tract and the "Buck Island" tract or on the northern margin of said tracts: or, did the words "lying and being to the northwest of the river Ohio," in the act of cession of Virginia in 1783 and its deed of cession of 1784, fix the southern boundary of that portion of the Northwest Territory afterward formed into the State of Indiana on the southern margin of the "Green River Island" and "Buck Island" tracts, or on the northern margin of these tracts.

2. Is the "Buck Island" tract an accretion? If so, has it become annexed to the "Green River Island" tract, or to the undisputed territory of Indiana?

3. Has either State exercised jurisdiction over the disputed tracts in such a manner as to change the location of the boundary line?

4. Has the location of the State boundary been changed by any legislation of the States of Indiana and Kentucky and the proceedings thereunder?

IV. *The Questions raised by the Issues.* Upon these issues in connection with the evidence, the following questions of law and fact arise:

(Under the first Issue.)

1. Do the words, "lying and being to the northwest of the river Ohio" in the act of cession of 1783

from Virginia to the United States, and in the deed of cession of 1784 from Virginia to the United States, and the words "on the south by the Ohio river" in the act of Congress of 1816 providing for the formation of the State of Indiana, fix the southern boundary of the State of Indiana at the middle line of the Ohio river, or on the north or the south side of the Ohio river, and if on either the north or the south side of the Ohio river, at the line of high water-mark, medium water-mark, or low water-mark?

2. If it be granted that the southern boundary of the State of Indiana is the low water-mark of the Ohio river upon the northwest side, is the low water-mark of the Ohio river on the northwest side, at the present time, on the north or the south margin of the "Green River Island" tract and the "Buck Island" tract? Does the line of this low water-mark determine the State boundary?

3. If it be granted that the low water-mark on the northwest side of the Ohio river is at the present time along the southern margin of the "Green River Island" tract, and the "Buck Island" tract, and that the location of this low water-mark at the present time does not fix the State boundary, is it necessary to examine into the facts relating to the location of the low water-mark prior to 1816, when the State of Indiana was formed with the Ohio river as its boundary on the south, or does the formation of the State of Indiana in 1816 with that boundary, so fix the boundary as against the State of Kentucky as to make evidence as to the location of the low water-mark prior to that date immaterial.

4. If the location of the State boundary line was definintely fixed in 1816 at the low-water mark of the

Ohio river, was the low-water mark on the northwest side of the Ohio river in 1816 on the north or south margin of the "Green River Island" tract and the "Buck Island" tract, and has it ever since remained as located in 1816?

5. If it be necessary, for the purpose of determining the State boundary, to examine into the location of the low water-mark on the northwest side of the Ohio river as it existed prior to 1816, did the United States survey of 1806, a meander line of which ran along the north side of the "Green River Island" tract and the "Buck Island" tract, affect the location of the State boundary line?

6. If the State boundary line was not definitely fixed at the low water-mark on the northwest side of the Ohio river in the year 1816, but was so fixed by the deed of cession from Virginia to the United States in 1784, and by the act of cession of Virginia in 1783, was the low water-mark on the northwest side of the Ohio river, in 1783 and 1784, on the north or the south margin of the "Green River Island" tract and the "Buck Island" tract, and has it ever since remained as it existed in 1783 and 1784?

7. If it be granted that the southern boundary of the State of Indiana is the low water-mark on the northwest side of the Ohio river, and that the low water-mark on the northwest side of the Ohio river at the present time is on the southern margin of the "Green River Island" tract and the "Buck Island" tract; but, since 1816 or 1783, the low water-mark has been along the north margin of those tracts; has the process, by which the location of the low water-mark has changed, been gradual or sudden, and has such change been a change to a new condition or a return to an old condi-

tion? If it should be found that the location of the low water-mark has changed, has the State boundary line changed its location in consequnce of such a change of location of the low water-mark?

(Under the second issue.)

8. If this Court should find that the State boundary line is along the north margin of the "Green River Island" tract, does it extend along the north or the south margin of the "Buck Island" tract, by reason of the fact that the "Buck Island" tract is an accretion to or a part of the "Green River Island" tract; or an accretion to, or a part of, the undisputed territory of Indiana?

(Under the third issue.)

9. Has the State of Kentucky exercised sovereignty and jurisdiction over the "Green River Island" tract or the "Buck Island" tract in such a manner as to affect the location of the State boundary line?

(Under the fourth issue.)

10. Have the States of Indiana and Kentucky so legislated and have such acts been done under such legislation as to affect the location of the State boundary line?

V. *Method of Introducing Evidence.* In view of the fact that the taking of the testimony in the case might necessarily be somewhat slow and irregular, the witnesses being nearly all old persons, and the written evidence being not easily obtainable, the following stipulations as to the manner of procedure were entered into between the parties herein and filed in this case January 11, 1888, to-wit:

"That, upon the cause being put at issue, depositions may be taken by either party before an officer authorized to take depositions by the laws of the States

of Indiana or Kentucky, upon due notice to the adverse party, and if taken before an officer having an official seal, no other no other authentication shall be required."

"That duly authenticated copies of any records, maps, or official documents may be filed by either party with the Clerk as evidence in the cause upon furnishing to the adverse party copies thereof, subject to exception to their competency as evidence."

(Record p. 7.)

In pursuance of these stipulations an order of this Court was made, embodying the above mentioned provisions as to procedure.

(Record p. 8.)

Accordingly all the testimony in this case has been taken before notaries of Indiana and Kentucky.

All "copies of records, maps, or official documents" which were introduced in evidence by either party were passed over to the notaries during the progress of the testimony and marked as exhibits by the notaries before being "filed with the Clerk as evidence in the cause," for the sake of easy identification.

VI. *The Character of the Evidence.* The State of Indiana introduced the testimony of living witnesses to facts and to opinions as experts, the depositions of deceased persons given in a case in which the location of the State boundary was in issue as determining the jurisdiction of a state court; maps showing the present topography of the territory between the boundary lines as claimed and the present level of certain portions of it above low water-mark; old maps of the territory and extracts from judicial, legislative and executive records, and from books of travel and navigation.

The State of Kentucky introduced the testimony of

living witnesses both to facts and perhaps one witness to opinion as an expert; the depositions of deceased persons in the case above referred to; old maps, extracts from judicial records and books of navigation; copies of warrants, surveys, patents and deeds; and extracts from county records.

The following stipulation was entered into regarding the evidence:

"All testimony introduced by either party shall be subject to exceptions, to be raised either on motion or at final hearing, in the same manner as if the testimony had been specifically objected to at the time when the depositions were taken."

(Record p. 17.)

The complainant has never raised any objection by motion to any of the evidence introduced and makes none now at the final hearing. The testimony has been kept within the proper bounds on both sides.

In a case like this, in which the Court sits as an arbitrator in an international dispute, and which is therefore of the utmost dignity and importance; and in which, by reason of its involving an investigation of facts extending over more than one hundred years, it is impossible to obtain more than an imperfect and incomplete knowledge of the facts, it is improper that any light which has been thrown upon the case should be shut out.

The character of evidence introduced in this case is much the same as of that which was introduced in the case of *Missouri* v. *Kentucky*, 11 Wall. 395. (See pages 396, 397.)

VII. *Ths Jurisdiction of the Court.* That this Court has jurisdiction to determine and establish the location

of a boundary between States was absolutely settled by the decision of this Court in the case of *Virginia* v. *West Virginia*, 11 Wall., 39, in which all the previous cases on the subject were commented upon and the following statement as to the law made by the Court, speaking by Mr. Justice Miller:

"We consider, therefore, the established doctrine of this Court to be, that it has jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated, because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the Court may render, affects the territorial limits of the political jurisdiction and sovereignty of the States which are parties to the proceeding."

See also *Wisconsin* v. *Pelican Insurance Company*, 127 U. S., 265, at pp. 287, 288.

ARGUMENT.

I.

DO THE WORDS "LYING AND BEING TO THE NORTHWEST OF THE RIVER OHIO" IN THE ACT OF CESSION OF 1783 FROM VIRGINIA TO THE UNITED STATES, AND THE WORDS "ON THE SOUTH BY THE OHIO RIVER" IN THE ACT OF CONGRESS OF 1816 PROVIDING FOR THE FORMATION OF THE STATE OF INDIANA, FIX THE SOUTHERN BOUNDARY AT THE MIDDLE LINE OF THE OHIO RIVER, OR ON THE NORTH OR THE SOUTH SIDE OF THE OHIO RIVER, AND IF ON EITHER THE NORTH OR SOUTH SIDE OF THE OHIO RIVER, AT THE LINE OF HIGH WATER-MARK, MEDIUM WATER-MARK OR LOW WATER-MARK?

On December 20, 1783, the State of Virginia passed an act, commonly called the Act of Cession, but which

merely authorized its delegates when assembled in the Congress, to convey to the "United States in Congress Assembled" "all right, title and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio."

On March 1, 1784, a deed of cession was duly executed and accepted, in which exactly the same words of description of the right, title, and claim conveyed are used.

By an act of Congress approved April 19, 1816, "to enable the people of Indiana Territory to form a constitution and State government and for the admission of such State into the Union," it was provided "That the State shall consist of all the territory included within the following boundaries, to-wit: on the south, by the river Ohio, from the mouth of the Great Miami River to the mouth of the Wabash: *provided*, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the Ordinance for the government of the territory northwest of the river Ohio."

On June 10, 1816, the provisions of the act of Congress of April 19, 1816, above referred to, were ratified and accepted and the boundaries fixed in that act established as the boundaries of the State of Indiana by the representatives of the people of the territory of Indiana, which ordinance was in the words following:

"BE IT ORDAINED *by the representatives of the people of the Territory of Indiana, in Convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen*, That we do, for ourselves

and our posterity agree, determine, declare, and ordain, that we will and do hereby accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled 'An act to enable the people of the Indiana Territory to form a State government and constitution, and for the admission of such State into the Union, on an equal footing with the original States.'

"And we do, for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said State of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid."

The State of Indiana was admitted into the Union by resolution of December, 1816.

(Note *a*., Vol. 3, United States Statutes at Large, p. 289.)

In that year, 1820, the case of *Handly's Lessee* v. *Anthony* was brought in this Court from the Circuit Court of the United States for the District of Kentucky. That case was an action of ejectment, in which the plaintiff claimed under a grant from the State of Kentucky and the defendants under a grant from the United States. The title of the individuals who were parties in that action depended, as Chief Justice Marshall, who delivered the opinion of the Court, states, "upon the question whether the lands lie in the State of Kentucky or in the State of Indiana." The land in question in that case was land lying north of the main Ohio river, and between the main river and a bayou which was dry during a portion of the year. The question as to the boundary between the State of Indiana and the State of Kentucky with respect to the Ohio river was discussed in that case both in the Court below and in

this Court, and it was held that the land was within the boundary of the State of Indiana. The errors assigned in this Court were the giving and refusing certain instructions to the jury. The Court below had instructed the jury that, admitting that the western and northwestern boundary of Kentucky included all the islands of the Ohio river, and extended to the western and northwestern bank of the Ohio, yet no land could be called an island of that river unless it was surrounded by the waters of the Ohio at low water-mark; and to low water-mark only, on the western or northwestern side of the Ohio. did the boundaries of the State of Kentucky extend; and that if the water did not run through the channel of the bayou at low water, but left part thereof dry, the land between the bayou and the main river was not an island nor within the State of Kentucky.

The instructions which the Court refused were to the effect that the land between the bayou and the main river was within the State of Kentucky if it was surrounded by the water of the Ohio flowing in the channel at the middle and usual state of the water in the Ohio.

The question involved in that case, so far as the boundary line between the States was concerned, was whether the boundary line between the States was or was not at the medium water-mark on the northwest side of the Ohio river. There was no claim that the boundary line was north of the medium water-mark on the northwest side, and consequently it was entirely immaterial whether the boundary line went to low water-mark on the northwest side or to the middle line of the river or to low water-mark on the southeast side.

If the boundary line was south of the medium water-mark on the northwest side, the land was necessarily in Indiana, whether the boundary line was at low water-mark on either side or at the middle line of the Ohio river.

The Court however in that case entered into an inquiry as to the construction of the act and deed of cession of the Northwest Territory and arrived at the conclusion that the boundary between the States was the low water-mark on the northwest side of the Ohio river. The argument of Chief Justice Marshall is shown by the following quotations:

"* * * It is not the bank of the river, but the river itself at which the cession of Virginia commences. She conveys to Congress all her rights to the territory 'situate, lying, and being to the northwest of the river Ohio.' And this territory, according to express stipulation, is to be laid off into independent States. These States, then, are to have the river itself, wherever that may be, for their boundary. This is a natural boundary, and, in establishing it, Virginia must have had in view the convenience of the future population of the country."

"When a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its own domains, and the newly created State extends to the river only. The river, however is its boundary."

"If, instead of an annual and somewhat irregular rising and falling of the river, it was a daily and almost regular ebbing and flowing of the tide, it would not be

doubted that a country bounded by the river would extend to low water-mark. This rule has been established by the common consent of mankind. It is founded on common convenience. Even when a State retains its dominion over a river which constitutes the boundary between itself and another State, it would be extremely inconvenient to extend its dominion over the land on the other side which was left bare by the receding of the water. And this inconvenience is not less where the rising and falling is annual than where it is diurnal. Wherever the river is a boundary between States, it is the main, the permanent river, which constitutes that boundary; and the mind will find itself embarrassed with insurmountable difficulty in attempting to draw any other line than the low water-mark."

"When the State of Virginia made the Ohio the boundary of States, she must have intended the great River Ohio, and not a narrow bayou into which its waters occasionally run. All the inconvenience which would result from attaching a narrow strip of country lying on the northwest side of that noble river to the States on its southeastern side, would result from attaching to Kentucky, the States on its southeastern border, a body of land lying northwest of the real river, and divided from the main land only by a narrow channel, through the whole of which the waters of the river do not pass, until they rise ten feet above low water-mark."

"The case is certainly not without its difficulties; but in the great questions, which concern the boundaries of States, where great natural boundaries are established in general terms, with a view to public convenience and the avoidance of controversy. We think the great object where it can be distinctly perceived ought

not to be defeated by those technical perplexities which may some times influence contracts between individuals. The State of Virginia intended to make the great River Ohio, throughout its extent, the boundary between the territory ceded to the United States and herself. When that part of Virginia, which is now Kentucky, became a separate State, the river was the boundary between the new States, erected by Congress in the ceded territory, and Kentucky. Those principles and considerations which produced the boundary ought to preserve it. They seem to us to require that Kentucky should not pass the main river and possess herself of lands lying on the opposite side, although they should, for a considerable portion of the year, be surrounded by the waters of the river flowing into a narrow channel."

From what has been said above, it is evident that the conclusion of this Court, in the case of *Handly's Lessee* v. *Anthony*, above referred to, relating to the State boundary line, is a *dictum*, and that it is, therefore, open to this Court to decide whether the boundary line between these States extends along the middle line of the Ohio river or along the line of high water-mark, medium water-mark or low water-mark on the northwestern side or the southeastern side.

There have been few cases in the State Courts in which the exact location of the boundary of the States northwest and southeast of the Ohio river has been a material question.

The question has been considered in the State Courts, and the following may be said to be the result of the decisions.

The Kentucky Courts have always claimed, under

the authority of *Handly's Lessee* v. *Anthony*, to the low water-mark on the northwest side of the Ohio River.

Fleming v. *Kenney*, 4 J. J. Marshall, 158.
Church v. *Chambers*, 3 Dana, 279.
McFall v. *Commonwealth*, 2 Metc., 394.
McFarland v. *Knight*, 6 B. Mon., 510.

In Indiana the authority of *Handly's Lessee* v. *Anthony* is recognized as applicable to the boundaries of riparian owners, but the right of wharfing out into the Ohio river is insisted upon.

Stinson v. *Butler*, 4 Blackf., 285.
Cowden v. *Kerr*, 6 Blackf., 280.
Doe v. *Hildreth*, 2 Ind., 274.
Commissioners v. *Pidge*, 5 Ind., 13.
Bainbridge v. *Sherlock*, 29 Ind., 364.
Gentile v. *The State*, 29 Ind., 409.
Carlisle v. *The State*, 32 Ind., 55.
Martin v. *City of Evansville*, 32 Ind., 85.
Sherlock v. *Bainbridge*, 41 Ind., 35.
Sherlock v. *Alling*, 44 Ind., 184.

The same may be said of the Courts of Illinois, though there is a strong tendency to claim to the middle of all rivers.

Middleton v. *Pritchard*, 3 Scam., 570.
Ensminger v. *People*, 47 Ill., 384.
Buttenoth v. *St. Louis Bridge Co.*, 123 Ill., 535.
Fuller v. *Dauphin*, 124 Ill., 542.

In Ohio and Virginia the question has been hotly discussed, and the authority of *Handly's Lessee* v. *Anthony* denied.

Virginia was dissatisfied with the case of *Handly's Lessee* v. *Anthony* because she claimed to high water-mark on the northwest side of the river; Ohio, because she claimed to the middle of the river.

The question between Virginia and Ohio arose in 1846, in the case of *Commonwealth* v. *Garner et al.*, reported in 3 Grattan, 655. Garner and other citizens of Ohio, while in the act of assisting a number of slaves to escape from Virginia to Ohio, were arrested by Virginia officers between high and low water-mark on the northwest side of the Ohio river. The prisoners were defended by the Hon. Samuel F. Vinton, of Ohio. The case went to the highest Court of Virginia, and elaborate opinions were written by nearly all the Judges, the opinions occupying 125 pages of the Report. The majority held that the County Court of Virginia had no jurisdiction of the offense on the ground that the State boundary did not extend beyond low water-mark on the northwest side of the Ohio river. Five Judges dissented on the ground that the County Court of Virginia had jurisdiction to high water-mark on the northwest side of the river, the statements in *Handly's Lessee* v. *Anthony* being recognized as *dicta*.

The following statement made by Taliaferro,, J. who delivered the first opinion, shows the position of Ohio regarding the State boundary at that time. After stating that, on the facts, the question was whether the place where the prisoners were standing when arrested was the soil of Virginia, he proceeds: "I understood the counsel for the prisoners to say, (speaking as though he spoke for the State of Ohio) that it never was. This will justify me in investigating the right of Ohio to deny the title of this State, through which I understand her to derive her title. The counsel said, that though the State of Ohio in this case, was willing to recognize the authority of *Handly's Lessee* v. *Anthony*, 5 Wheat, R. 374, yet, when occasion should arise, she would contend

for the *filum medium aquæ*, notwithstanding that case, as her boundary."

In the Garner case all the Judges discussed the question of the exact location of the State boundary line, and claimed that it was either at low water-mark or high water-mark on the northwest side of the Ohio river. Since that case the question has not been before the Virginia Courts.

In Ohio, the Courts have never recognized the case of *Handly's Lessee* v. *Anthony* as fixing the State boundary, except as locating the State boundary at least as far south as the low water-mark on the northwest side of the Ohio river.

In *Benner's Lessee* v. *Platter, et al.*, 6 Ohio, 505, the Court said: "The Ohio is a navigable river: it is moreover the boundary of State jurisdiction and sovereignty, and could only be a proper boundary for such purpose whilst each State was limited to its own side of the water."

In *Bridge Co.* v. *Mayer*, 31 Ohio St., 317, the question was as to the taxation of a bridge across the Ohio river owned by a corporation chartered both by Ohio and Kentucky. The Ohio charter provided for the assessment of taxes upon one-half of the capital stock of the corporation actually paid in. The Court said (p. 327): "The State of Ohio has always claimed to own to the center of the river. So far as any light is thrown upon that subject by the charter, the Company and the State both seem to have proceeded upon the theory that half of the bridge belonged to the State of Ohio."

White, J., in a dissenting opinion said: "It is claimed that only so much of the bridge as lies north of

the low water-mark on the north side of the river is liable to be taxed in this State.

"I cannot assent to this view. The claim is founded on the idea that low water-mark on the north side of the river, and not the middle of the stream, constitutes the boundary line between the States of Ohio and Kentucky.

"Whichever line may in fact be the true boundary between the States, Ohio claims jurisdiction to the middle of the river. This is apparent from the charter of the bridge company."

Very recently, Mr. Justice Brewer has pointed out, in a case decided by him as Circuit Judge, that the statement of this Court in *Handly's Lessee* v. *Anthony* relatting to the State boundary line, is a *dictum*, and has intimated a doubt as to whether this statement is in accord with the settled rules of construction of written instruments relating to boundaries.

The case above referred to is *St. Joseph and G. I. R. Co.* v. *Devereux*, 41 Fed. R. 14 (Mch. 4, 1890.)

That case was an injunction suit to restrain the collection of a tax on a bridge crossing the Missouri river at St. Joseph. The bridge had been assessed as a whole in Kansas, and the question was whether it was partly in Kansas and partly in Missouri, or wholly in Kansas, the determination of the question depending upon whether the State boundary between Missouri and Kansas was the low water-mark on the east side of the Missouri river or the middle line of that river. The words of the act of Congress extending the jurisdiction of Missouri were: "and the western boundary of the United States shall be extended to the Missouri river." After referring to the cases of *Jones* v.

Soulard, 24 How., 41, and *Howard* v. *Ingersoll*, 13 How. 381, as establishing the general doctrine of ownership to the middle thread of a river above tide water by the riparian proprietor, unless the bed of the river is expressly excluded, the opinion proceeds as follows:

"As against this general rule and these authorities, defendant relies largely on the case of *Handly's Lessee* v. *Anthony*, 5 Wheat. 375. That case decided that,

'The boundary of the State of Kentucky * * * does not include a peninsula or island on the western or northwestern bank, separated from the mainland by a channel or bayou, which is filled with water only when the river rises above its banks, and is at other times dry.'

"It seems to have been assumed that the northern bank of the Ohio river was the boundary of the State of Kentucky; and the question decided was where that northern bank was. And yet there is, unquestionably, something in the opinion of the Court which helps to sustain defendant's contention. The territory north of the Ohio was ceded by Virginia to the general government, and the description was, the territory 'situate, lying, and being to the northwest of the River Ohio,' and, in respect thereto, Chief Justice Marshall, speaking for the Court, uses this language:

'When a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly created State extends to the river only. The river, however, is its boundary.'

"Counsel say that was a cession from a State to the general government; this, a cession from the general government to the State; that, a cession of all 'northwest of the river'; this, of all between a fixed line and the river; and from this similarity insist that that case is decisive of this. That there is similarity, must be conceded; and yet there is the distinction suggested by me in the fore part of this opinion. One is only a cession—a grant—while the other is also a governmental designation of a boundary." Further, the language of the description is not identical. One is—and this in that which is only a grant—'territory northwest of the river,' and the Chief Justice holds that that grants nothing of the river; that the description is exclusive. At best, this is mere *dictum;* for the jurisdiction of Indiana was sustained over the tract in question. Here the cession was to land between the old State line and the river, and the extension of the boundary was to the river, thus making that natural water-course the boundary; and the general rules construing such words of cession, as subsequently affirmed by the Supreme Court in the cases cited *supra*, carry that boundary to the center of the channel."

The conclusion of Chief Justice Marshall is based upon the theory that the act and deed of cession of Virginia, are to be treated as a grant of the undisputed territory of Virginia, and that the words "to the northwest of the River Ohio," are to be construed as though they were words of strict boundary rather than of governmental description. He admits that his construction is not without difficulty, and the words are plainly ambigous.

An examination of the circumstances surrounding

the act of cession makes it evident that that act was rather an act of compromise than of grant of undisputed territory, and that the words "to the northwest of the River Ohio" were used in that act as words of governmental description of the whole territory ceded rather than as words of strict boundary of one side of that territory, and that the words are more properly construed as bounding the tract conveyed at the middle line of the Ohio river than at any other line.

The full description is as follows: "All right, title and claim, as well of soil as of jurisdiction, which this Commonwealth hath to the territory or tract of country, within the limits of Virginia charter, situate, lying, and being to to the northwest of the River Ohio."

In the Constitution of Virginia of 1776, it was provided that "the western and northern extent of Virginia shall stand as fixed by the charter of King James I. in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains."

2 Charters and Constitutions, by Ben. Perley Poore, Compiled under an Order of the United States Senate, p. 1912.

In the charter of Virginia of 1609, the boundaries of the colony of Virginia were described as follows: "All those Lands, Countries, and Territories, Situate, Lying, and being in that Part of America called Virginia, from the Point of Land called Cape or Point Comfort, all along the Sea Coast to the Northward, two hundred miles, and from the Said Point of Cape Comfort all

along the Sea Coast to the Southward two hundred miles, and all that Space and Circuit of Land Lying from the Sea Coast of the Precinct aforesaid, up into the Land throughout from Sea to Sea, West and Northwest."

2 Charters and Constitutions, p. 1897.

The meaning of this description has always been a matter of dispute. For the arguments relating to its meaning, see "The Old Northwest," by Prof. Hinsdale, (1888), pp. 73-77.

The clause containing the description of the boundary fixed by the treaty of 1763 was as follows:

"In order to re-establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed that for the future the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the middle of the river Mississippi from its source to the river Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Pontchartrain to the sea." (The "Old Northwest," p. 67.)

The treaty of 1763 left the northern boundary indeterminate, and it was not definitely fixed until 1782, and was not recognized by the United States till 1783, when the treaty between the United States and England was made.

The validity of these claims of Virginia was continually disputed. Franklin, in the year 1776, believed that the western boundary of Virginia was the Alleghany mountains, (see the "Old Northwest," p. 135)

and this claim was made by the Indiana Company, the Vandalia Company, and the State of New York, who all claimed rights in the territory west of the Alleghany mountains.

In 1776 Virginia began to press its claims to the territory southeast of the Ohio river between North Carolina and the Mississippi. In 1776 also, Kentucky County was formed, as one of the counties into which an immense tract of land which had been called Fincastle County was divided, with the following boundaries: "All that part thereof which lies to the south and westward of a line beginning on the Ohio, at the mouth of Great Sandy Creek, and running up the same and the main or northeasterly branch thereof to the Great Laurel Ridge or Cumberland mountains, thence southeasterly along the said mountain to the line of North Carolina."

(9 Hening's Va. St. p. 257.)

Kentucky County was formed into three counties and called the Kentucky District in 1780.

(10 Hening's Va. St. 315.)

In the statute forming these three counties, the Ohio river is not mentioned as a boundary in any other way than that one line of one of the counties thus formed, (Jefferson County) extends down the Green river "to its junction with the Ohio."

In 1778 Virginia claimed the right of soil and jurisdiction over the territory northwest of the Ohio river under her charter of 1609, the treaty of 1763, and the conquest of George Rogers Clarke.

In 1778 the Virginia Legislature declared that "all the citizens of this Commonwealth, who are already settled or who shall hereafter settle on the western side

of the Ohio, shall be included in a distinct County, which shall be called Illinois County.

(The "Old Northwest," pp. 158, 159.)

(9 Hening's Va. St. p. 553.)

In that same year the preliminary arrangements for a land office were made.

In the year 1779, before the land office was established by Virginia, the State of Maryland, fearing the power of Virginia if allowed to extend over so immense a territory, remonstrated against her claims; and the Indiana Company and the Vandalia Company claiming land southeast of the Ohio river by purchase from the Six Nations, and by grant from the King in Council, as the medium by which England intended to establish a new colony southeast of the Ohio, memorialized Congress, objecting to the claims of Virginia southeast of the Ohio and offering certain propositions to the Congress for a guarantee of their title.

(The "Old Northwest," p. 212.)

As a result of these remonstrances the Congress made the following protest:

"WHEREAS, The appropriation of vacant lands by the several States during the continuance of the war, will, in the opinion of Congress, be attended with great mischief; therefore,

"*Resolved*, That it be earnestly recommended to the State of Virginia to reconsider their late act of Assembly for opening their land office; and that it be recommended to the said State, and all other States, similarly circumstanced, to forbear settling or issuing warrants for unappropriated lands, or granting the same during the continuance of the present war."

(The "Old Northwest," pp. 213, 214.)

The protest was regarded, and in the act establishing the Virginia Land office in 1779, the settlement or location of lands northwest of the Ohio was prohibited by the following clause:

"No entry or location of land shall be admitted—on the northwest side of the Ohio river."

(10 Hening's Va. St., 54.)

On December 14th, 1779, the Legislature of Virginia addressed a remonstrance to the Congress against receiving propositions from the Indiana and Vandalia Companies, and against any assumption on the part of Congress to decide the location of the western boundary of the State of Virginia. This remonstrance is valuable because it gives the first intimation of the course which Virginia intended to adopt with respect to the dispute concerning her western boundaries, which was one of the most serious obstacles to the formation of the Union. In this paper Virginia first presents the justice of establishing her title to the lands southeast of the Ohio rather than that of the Indiana and Vandalia Companies.

The remonstrance then proceeds: "Congress has lately described and ascertained the boundaries of these United States, as an ultimatum in their terms of peace. The United States hold no territory but in right of some one individual State in the Union; the territory of each State from time universal hath been fixed and determined by their respective charters, there being no other rule or criterion to judge by. Should these in any instance (when there is no disputed territory between particular States), be abridged without the consent of the State affected by it, general confusion would result: each State would be subjected in its turn to the encroachments of the others, and a field opened for future

wars and bloodshed; nor can any arguments be fairly urged to prove that any particular tract of country within the limits claimed by Congress on behalf of the United States is not part of the chartered territory of some one of them, but must militate with equal force against the right of the United States in general, and prove such tract of country (if northwest of the Ohio river), part of the British Province of Canada."

(10 Hening's Va. St., 557, 559.)

(The "Old Northwest," pp. 214, 215.)

In order to understand the force of this remonstrance, it is necessary to refer to the contemporaneous history of the United States.

The war of the Revolution had just closed and the terms of the treaty of peace were being discussed.

England, under the treaty of 1763, with France, claimed all the rights of France in the territory east of the Mississippi river, and this claim covered all the territory northwest of the Ohio river. In 1774, England had passed an act known as the Quebec Act, which was one of the grievances referred to in the Declaration of Independence. This act extended the boundaries of the province of Quebec so as to include all the territory northwest of the Ohio river to the Mississippi, restored the French system of laws throughout this territory, and confirmed the French grants and the rights of the Roman Catholic Church derived from France. England, by reason of her treaty rights with France, claimed that she had not lost her rights to this territory by her defeat by the United States.

(The "Old Northwest," p. 141.)

It was plainly the intention of Virginia by this remonstrance, first, to show the injustice and impro-

priety of yielding the territory southeast of the Ohio river to private land companies instead of to the State of Virginia, and, second, to suggest to the Congress the advantage to be gained by the United States, in the negotiations with England, by their taking a conveyance of the claims of Virginia (then greatly disputed) to the territory northwest of the Ohio river as a basis upon which the United States might sustain its claims to the territory northwest of the Ohio river against the claims of England derived from France.

In 1780 and 1781, it became still more important to the United States in the pending negotiations with England, to have some specific claim to present to the territory northwest of the Ohio river, by reason of the claim of Spain founded on an expedition of conquest made by the Spanish in the winter of 1780–1781 from St. Louis into the very heart of the northwest territory, in which the port of St. Joseph was captured, and formal possession taken of the territory commanded by it.

(The "Old Northwest," pp. 173,174.)

In consequence of this expedition, Spain, which was a party to the pending negotiations, set up a claim to the territory northwest of the Ohio river.

(The "Old Northwest," p. 175.)

Under these circumstances, in 1781, Virginia made its formal proposition to the Congress to cede all its claims to the territory northwest of the Ohio river, on condition that the Congress would guarantee its claims to the territory southeast of the Ohio river.

The condition was that "all the remaining territory of Virginia included between the Atlantic Ocean, and the southeast side of the river Ohio, and the Maryland,

Pennsylvania and North Carolina boundaries, shall be guaranteed" to Virginia by the United States.

(10 Hening's Va. St.; pp. 564–566.)

(The "Old Northwest" p. 220.)

In that instrument the whole territory claimed by Virginia was divided into two parts—"the lands northwest of the river Ohio;" and "the remaining territory of Virginia included between the Atlantic Ocean and the southeast side of the river Ohio," etc., thus leaving out the Ohio river itself, if the words are to be construed strictly and technically.

The Congress, in May, 1782, refused to accept the cession on this condition, the committee appointed to inquire into the matter having reported in November, 1781, against the claims of Virginia to the territory either southeast or northwest of the Ohio river, west of the Alleghany mountains.

(The "Old Northwest," pp. 227, 228.)

In June, 1783, after the matter had been the subject of frequent disputes in Congress, the Committee reported the following recommendation, by way of compromise, which report was adopted by Congress, September 13, 1783.

"As to the last condition, your committee are of opinion, that Congress cannot agree to guarantee to the Commonwealth of Virginia, the land described in the said condition, without entering into a discussion of the right of the State of Virginia to the said land; and that by the acts of Congress it appears to have been their intention, which the committee cannot but approve, to avoid all discussion of the territorial rights of individual States, and only to recommend and accept a cession of their claims whatsoever they might be, to vacant ter-

ritory. Your committee conceive this condition of a guarantee, to be either unnecessary or unreasonable; inasmuch as, if the land above mentioned is really the property of the State of Virginia, it is sufficiently secured by the Confederation, and if it is not the property of that State, there is no reason or consideration for such guarantee."

(The "Old Northwest" pp. 240, 241.)

Under these circumstances, the State of Virginia decided to make no claim to a guarantee of its rights to the territory southeast of the Ohio river, and on December 20, 1783, re-enacted the act of cession of 1781, leaving out the objectionable condition. It is to be noticed that both in the act of conditional cession of 1781, and the act of cession of 1783, the land is described as lying "to the northeast of the River Ohio."

The reason of this is evident. At the time of the passage of the act of 1781, the northern boundary of the territory ceded by France to England in 1763, (to which Virginia claimed), was not fixed, and therefore it was impossible to describe the territory by metes and bounds or otherwise than "within the limits of the Virginia Charter, to the northwest of the River Ohio." The treaty of Paris, by which this northern line was fixed, was not signed until September 13, 1783, and the provisions of that treaty relating to the northern boundary of the United States were doubtless not known until after the passage by Virginia of the act of cession of 1783.

It appears, therefore, that:

1. The words "to the northwest of the river Ohio" in the act and deed of cession of Virginia are not words of boundary, since the territory had not at that time any determinate bounds on the north.

2. These words were used in the previous statutes of Virginia, and in the common and official speech and writing of the time to describe a large tract of territory claimed by England, France, Spain, the United States and Virginia.

3. The act of cession of 1783 is remodeled from the act of 1781, in which the territory of Virginia is divided into two parts by such description that, if the words of description are construed technically, the Ohio river itself is not described.

4. The act of 1783 is not strictly an act of cession, but a proposition for compromise between Virginia and the United States of a dispute in which the United States claimed that Virginia had no title to the territory southeast or northwest of the Ohio river.

For these reasons it is evident that the words "within the limits of the Virginia Charter to the northwest of the river Ohio" in the act of Virginia of 1783 are words of governmental description of an indeterminate tract, contained in an agreement of compromise, and not words of definite boundary contained in an instrument of grant.

It is therefore improper to treat the act and deed of cession of Virginia as though they were a carefully drawn deed of grant by metes and bounds, and to give to the words "to the northwest of the river Ohio" the same technical significance which they might have if they constituted a part of a carefully drawn description by metes and bounds of a territory admitted to be the undisputed property of the grantor.

That the words "to the northwest of the river Ohio" were soon afterwards treated as words of general description, is shown by the title of the Ordinance of

1787, which reads "An ordinance for the government of the territory of the United States northwest of the River Ohio."

The act of Congress passed in May, 1790, at a time when the disaffection southeast of the Ohio was so great as to cause the Congress to fear that that district would separate itself from the United States, also illustrates the use of the words "northwest of the River Ohio" in the legislation of that period. This act is entitled "An Act for the Government of the Territory of the United States, south of the River Ohio," and reads as follows:

"Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the territory of the United States south of the river Ohio, for the purpose of temporary government, shall be one district; the inhabitants of which shall enjoy all the privileges, benefits and advantages set forth in the ordinance of the late Congress for the government of the territory of the United States northwest of the river Ohio. And the government of the said territory south of the Ohio shall be similar to that which is now exercised in the territory northwest of the Ohio," etc.

(1 Statutes at Large, p. 123.)

Certain words in the act of Virginia of December 18, 1789, "concerning the erection of the District of Kentucky into an independent State," were referred to in the case of *Handly's Lessee* v. *Anthony*, above mentioned, as sustaining the claim of Kentucky to jurisdiction to the low water-mark on the northwest side of the Ohio river. These words are: "That the use and navigation of the river Ohio, so far as the territory of the proposed State, or the territory which shall remain

within the limits of this Commonwealth lies thereon, shall be free and common to the citizens of the United States; and the respective jurisdictions of this Commonwealth, and of the proposed State, on the river as aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river."

In view of the circumstances under which this act was passed, it seems that, instead of supporting Chief Justice Marshall's construction, it supports the construction which makes the middle line of the Ohio river the boundary.

In 1789 the District of Kentucky was thoroughly disaffected and Virginia had nearly lost control of it.

Albach, in his "Annals of the West," p. 515, says:

"Thus, at that period (1788), there was a general spirit of disunion along the whole border south of the Ohio. Wilkinson and his confederates were plotting the surrender of Kentucky to Spain. Sevier and Robertson, with their party in Tennessee, were vehement in their unanimous desire to put that region under the protection of the Spanish crown. The land companies of the southwest were ready, for the sake of profit, to declare themselves the slaves of Spain. In all the settlements and the districts of the southwest, at the formation of the federal constitution, there was a general hostility to the federal government, and the leading politicians of that country, acting as it were with a common impulse, were plotting the dissolution of the Union, and the surrender of their country to the domination of Spain."

On July 27, 1787, the Congress had "authorized the sale of 5,000,000 acres lying north of the Ohio, west of the seven ranges, and east of the Scioto river, 1,500,-

000 for the Ohio Company, and 'the remainder'—'for a private speculation, in which many of the principal characters of America were concerned.'"

(The "Old Northwest," p. 275.)

Virginia accomplished three most important things by inserting the clause above referred to, in an act which must necessarily have received the consent of Congress under Art. 1, Sec. 10.

1. It bound the State of Kentucky to apply to the Ohio river the principles relating to the navigable waters wholly within the Northwest Territory, regarding which it was by the Ordinance provided that: "The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other States that may be admitted into the Confederacy, without any tax, import, or duty therefor."

2. It compelled Kentucky to agree with the United States that it would never attempt to control the navigation of the Ohio river. If Kentucky had gone over to Spain, the first act, of course, would have been to close the Ohio and Mississippi rivers to navigation. By keeping Kentucky in the Union and binding her to exercise only that concurrent jurisdiction which States bounded by navigable rivers would be entitled to exercise by the rules of international law, the possibility of either the Ohio or the Mississippi rivers being closed to navigation would be done away with, since Spain, without Kentucky and the southwest territory, east of the Mississippi, would not have been strong enough to have violated the obligations of the treaty of 1783, which provided for the free navigation of the Mississippi.

3. It bound itself and Kentucky to recognize as having concurrent jurisdiction with itself over the Ohio river "only the States which may possess the opposite shores of said river," that is, the United States and the States to be formed in the Northwest Territory, bounding on the Ohio river. Thus, all complications with the Ohio Company, or any other land company, would be avoided, since the United States, by consenting to the act, would bind themselves to protect Virginia and Kentucky from any such claims of jurisdiction over the Ohio river by any land company.

In this act Virginia treats itself and Kentucky as bounding *on* the Ohio river. The words are: "That the use and navigation of the River Ohio, so far as the territory of the proposed State or the territory which shall remain within the limits of this Commonwealth *lies thereon*," etc.

Further, this act is an admission by Virginia that the State or States possessing the opposite shores of the river, which at that time was the United States, had a right to exercise concurrent jurisdiction over the Ohio river with itself and Kentucky, since it does not purport to grant to the United States any new rights.

Probably nothing was further from the intention of the Virginia Legislature in adopting the act of cession of 1783 than to make claim to exclusive territorial rights over the Ohio river, as against the United States. The advantages of the Union were at that time fully recognized, and the immense value of the water-ways to the civilization of that period made it the one idea of the State to keep the great water-ways open to free navigation, the States on both sides possessing jurisdiction over the river for the proper preservation of peace and order thereon.

Unless the terms of written instruments make it absolutely clear that it was the intention that the boundary line between the States on the opposite sides of the river should be elsewhere than at the middle line, that line should be the boundary.

As above shown, the words of the act of cession of the Northwest Territory do not necessarily fix the boundary line elsewhere than at the middle line of the Ohio river.

It is therefore submitted that the middle line of the Ohio river is the boundary line between the States of Indiana and Kentucky.

II.

IF IT BE GRANTED THAT THE SOUTHERN BOUNDARY OF THE STATE OF INDIANA IS THE LOW WATER-MARK OF THE OHIO RIVER UPON THE NORTHWEST SIDE, IS THE LOW WATER-MARK OF THE OHIO RIVER ON THE NORTHWEST SIDE, AT THE PRESENT TIME, ON THE NORTH OR THE SOUTH MARGIN OF THE "GREEN RIVER ISLAND" TRACT AND THE "BUCK ISLAND" TRACT? DOES THE PRESENT LOCATION OF THIS LOW WATER-MARK FIX THE STATE BOUNDARY LINE?

It is a settled fact in this case that the low water-mark on the northwest side of the Ohio river, at the present time, is on the southern margin of both the "Green River Island" tract, (including in this tract the "Green River Island Tow-Head,") and the "Buck Island" tract, the testimony introduced by the complainant to these facts being undisputed.

The only ground on which it could be claimed that the low water-mark of the Ohio river is on the north margin of these tracts is that the depression which exists in a tolerably well defined form along the north side of

these tracts, and which is called the "Green River Island Bayou," is a channel of the Ohio river.

The testimony on behalf of the complainant conclusively shows that there is not only no channel on the north side of these tracts at present, but that the bed of what is claimed to have formerly been a channel is now partly under cultivation, thus negativing the idea of a channel of the Ohio river existing along the depression.

In order to prove the character of the hollow or depression which exists along the north side of these tracts, the State of Indiana employed Mr. James D. Saunders, of Evansville, who was County Surveyor from 1876 to 1880 and City Civil Engineer of Evansville from 1880 to 1887 (Record, pp. 71, 72, Q. 4,) to prepare a large map showing the two tracts, the river and the depression, and two other cross-section maps showing the width and shape of the "Green River Island" bayou, its depth with relation to the surrounding land, and its height above low water-mark of the Ohio river. His testimony will be found on page 81 of the Record, and the maps above referred to are Exhibits to his testimony, and are found following page 72 of the Record. From his testimony, in connection with these Exhibits, it appears that the bottom of the depression at the head of "Green River Island" is twenty-nine feet above the low water-mark established by the United States Government, and that the lowest point in the depression opposite the lower end of "Green River Island" is over twenty feet above this same low water-mark. The average depth of the depression below the level of the surrounding land is about fifteen feet. (Record, pp. 73 and 74, Q. 15–20.)

That is, before water will run through the depres-

sion at the head of the "Green River Island" tract at the present time, the water in the Ohio river must be at a height of over twenty-nine feet above low water-mark, and before water will run back into the lower end of the depression the water in the Ohio river must be at a height of more than twenty feet above low water-mark.

The testimony of Mr. Saunders further shows that the bottom of the depression now surrounding the "Buck Island" tract is about twenty-eight feet above low water-mark in the Ohio river.

(Record p. 78, Q. 69.)

The testimony introduced by the State of Indiana also proves conclusively that the low water-mark on the northwest side of the Ohio river is, at the present time, south of the "Green River Island Tow-head," and that the whole tract is an accretion to the "Green River Island" tract within the last twenty or thirty years.

(Testimony of Elizabeth Aiken, Record p. 44.)

(Testimony of John James, Record pp. 55, 56.)

Having shown the location of the low water-mark at the present time it would seem that the presumption should be that the line of low water-mark at the present time is the line of low water-mark which governs the boundary, in the absence of evidence showing the location of the low water-mark since 1783 to have been different, and showing also that the change of location was sudden. Such evidence the State of Kentucky has not produced.

III.

IF IT BE GRANTED THAT THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER IS, AT THE PRESENT TIME, ALONG THE SOUTHERN MARGIN OF THE "GREEN RIVER ISLAND" TRACT, AND THE "BUCK ISLAND" TRACT; AND THAT THE LO-

CATION OF THIS LOW WATER-MARK AT THE PRESENT TIME DOES NOT FIX THE STATE BOUNDARY, IS IT NECESSARY TO EXAMINE INTO THE FACTS RELATING TO THE LOCATION OF THE LOW WATER-MARK PRIOR TO THE YEAR 1816, WHEN THE STATE OF INDIANA WAS FORMED WITH THE OHIO RIVER AS ITS BOUNDARY ON THE SOUTH, OR DOES THE FORMATION OF THE STATE OF INDIANA, IN 1816, WITH THAT BOUNDARY, SO FIX THE BOUNDARY, AS AGAINST THE STATE OF KENTUCKY, AS TO MAKE EVIDENCE AS TO THE LOCATION OF THE LOW WATER-MARK PRIOR TO THAT DATE, IMMATERIAL?

By the act of Congress, approved April 19, 1816, "To enable the people of Indiana Territory to form a constitution and state government, and for the admission of such State into the Union," &c., it was provided "That the said State shall consist of all the territory included within the following boundaries, to-wit: on the south, by the River Ohio, from the mouth of the Great Miami river to the mouth of the River Wabash:—*Provided*, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the Ohio river."

On June 10, 1816, the provisions of the act of Congress of April 19, 1816, above referred to, were ratified and accepted, and the boundaries fixed in that act established as the boundaries of the State of Indiana by the Representatives of the people of the Territory of Indiana. Indiana was admitted into the Union by resolution of December 11, 1816.

The act of Congress of April 19, 1816, above referred to, was a recognition, on the part of the State of Kentucky, of the right of the United States, at the time

of such act, to exercise jurisdiction over the territory bounded on the south by the River Ohio, and a recognition of the right of the United States to transfer this jurisdiction to the State of Indiana. The words, "on the south by the River Ohio," naturally would carry to the middle of the River Ohio. They certainly carry to the low water-mark on the northwest side as it existed at the date of such transfer of jurisdiction.

It is submitted, therefore, that, granting that it is necessary for the State of Indiana in this case to make proof of the location of the low water-mark on the northwest side of the Ohio river prior to the present time, it is not necessary that it should in its proof go further back than the year 1816, since in that year the State of Kentucky recognized the right of the United States and of the State of Indiana to exercise jurisdiction at least to the low water-mark of the Ohio river on the northwest side.

IV.

IF THE LOCATION OF THE STATE BOUNDARY LINE WAS DEFINITELY FIXED IN THE YEAR 1816 AT THE LOW WATER-MARK OF THE OHIO RIVER, WAS THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER, IN 1816, ON THE NORTH OR SOUTH MARGIN OF THE "GREEN RIVER ISLAND" TRACT AND THE "BUCK ISLAND" TRACT, AND HAS IT EVER SINCE REMAINED AS LOCATED IN 1816?

It is shown by the testimony of living witnesses, practically without contradiction, that, since 1820, the depression north of the "Green River Island" tract has remained substantially as it is at present, the height of the bottom of the depression above low water-mark changing slightly from year to year by the washing and

filling caused by the high water at seasons of overflow, but the average height above low water-mark remaining substantially the same.

In support of this proposition we refer to the testimony of the following witnesses, called by the State of Indiana:

Ira A. Fairchild (1837–1888.)

Ira A. Fairchild, who was seventy-three years of age at the time of testifying, states (Record p. 19) that at the age of twenty-two (in 1837) he first became familiar with "Green River Island," and that then, in times of low water, the bayou was dry in places, but that there were holes in which the water stood, one of which was six or seven feet deep, and that the water as it rose in the river backed up and flowed in first at the lower end of the bayou; that originally the whole extent of the bottom land near the bayou was covered with large trees which caught the driftwood, and that these trees were cut down so as to allow the drift to be floated down the bayou; that some of the drift was floated down and some burnt up; that the crossings of the bayou were on the ground and not on the drift. (Record pp. 19–23.)

Humphrey Fickas (1838–1888.)

Humphrey Fickas, who was sixty-eight years of age at the time of testifying, states (Record p. 24, *et seq.*) that he has been familar with "Green River Island" for more than fifty years (before 1838) and that at low water the bayou "would go dry" from early in the spring until fall; and that the witness' father had said to him, when witness was less than twenty-one years of age, that the bayou "would go dry in dry weather;" that there would be holes along the bayou filled with water.

George Miller, Senior, (1839–1888.)

George Miller, Senior, who was sixty-nine years of age at the time of testifying (Record pp. 28, 29) states that he has been familiar with "Green River Island" since 1839, and that the bayou would be dry with the exception of holes and miry places (which, however, dried up in very dry weather) for from five to eight months in the year.

David Elkins (1842–1865.)

David Elkins, who was sixty-four years of age at the time of testifying, states (Record pp. 30, 33) that from 1842, when he first knew the bayou, until 18 5, it would go dry in places for four months in the year; that the springs along the banks kept running for a month or two after the water in the river went down; that the bank of the bayou was covered with cotton-wood and willows—the latter very dense; that this growth was cut off about 1850, and the bayou cleared out; that subsequent to this time a drift was allowed to form at the head of the "island" which caused a filling up of the bayou near the head; that the people "wanted this drift there."

Hester A. Holder (1828–1888.)

Hester A. Holder, who was seventy-seven years of age at the time of testifying, states (Record pp. 34, 38) that she has been acquainted with "Green River Island" over sixty years (before 1828); that the bayou went dry in times of low water, with the exception that it had standing water on it in places, and that it could be crossed dry footed; that when the river was up beyond an ordinary stage the bayou was fed by the river.

Elizabeth Aiken (1848–1888.)

Elizabeth Aiken, who was sixty-one years of age at

the time of testifying, states (Record pp. 38–51) that she has been familiar with "Green River Island" since 1848; that at that time the bayou was, and ever since has been, dry in times of low water, with the exception of pools and miry places; that it has at times filled up by the workings of the overflow water, and afterwards washed out; that it has exactly resembled in its workings the other sloughs in the bottom near the "island" and on the island itself.

Francis D. Allen (1843–1888.)

Francis D. Allen, who at the time of testifying was sixty-nine years of age, states (Record pp. 51-52) that he has been familiar with "Green River Island," for forty-five years (from about the year 1843), and that during times of low water in the Ohio river, the bayou was dry, with the exception of pools of water, and that there were several places where the bayou could be crossed on dry land. That at that time the land near the lower part of the bayou was wild and unimproved, and that he crossed the bayou on dry land, in the months of April and May, and also in the fall of the year.

John James (1838-1888).

John James, who was sixty-two years of age at the time of testifying, states (Record pp. 53-58) that he has been familiar with "Green River Island" from about the year 1838; that at the time of his first recollection the bayou was grown up the timber and brush, and that it "would go dry at any time like a low stage of water," except that there would be holes filled with water along the bayou; that the bayou could be crossed between the holes in which the water stood, and that there was at no place so much water standing, but that the bayou could

be crossed on horse-back, the only danger to a person crossing, arising from the presence of quicksands.

Matthias Angel (1829-1888).

Matthias Angel, who was sixty-nine years of age at the time of testifying, states (Record pp. 58-61) that he has been familiar with "Green River Island" since 1829, and that in the times of low water there were crossings over the bayou, and that at that time it would have taken about thirty feet of water above low water-mark to have caused the water to run into the head of the bayou; that the bayou divided at its head, and that between the two parts of the bayou lay the tract of land which was called "Buck Island."

John Miller, Senior, (1841-1888).

John Miller, Senior, who was seventy years of age at the time of testifying, states (Record pp. 61-63) that he has been familiar with "Green River Island" since 1841; and that the bayou then went dry in the summer; that he never crossed the bayou on dry ground except near its head, but that he never followed up or down the bayou seeking a crossing, and that it would have required at that time eighteen or twenty feet, and perhaps twenty-five feet of water in the river to cause water to flow into the bayou.

Peter Zapf (1845-1888).

Peter Zapf, who was seventy four years of age at the time of testifying, states (Record pp. 65-70) that he has been familiar with "Green River Island" since 1845, and that at that time the bayou went dry at times of low water, with the exception of ponds and that a person could cross the bayou nearly everywhere except where the ponds were.

Levi Hooker, (1838-1888).

Levi Hooker, who was seventy-eight years of age at the time of testifying, states (Record pp. 65-70) that he has been familiar with "Green River Island" since 1838, and that in times of low water the bayou was dry, with the exception of holes filled with water; that the navigation of the bayou at that time, at times of high water, was confined to wood boats, which the residents floated up the bayou, and then floated down loaded with wood or corn.

Azariah T. Whittlesey (1843-1888).

Azariah T. Whittlesey, who was fifty-five years of age at the time of testifying, states (Record pp. 91, 92) that he has been familiar with "Green River Island" since 1843, and that at that time the bayou went dry during the summer, except for the water which stood in the holes or in unusual depressions in the bayou; that at the time of his earliest recollection (Record p. 93) the bayou debouched from the Ohio river by two channels, between which was included "Buck Island," so-called; that the bottom of the two channels was above low water-mark, so that a person looking from the river at times of low water would see only a depression in the bank; and that to have filled these two channels would have required from twenty-eight to thirty feet of water in the Ohio river; that the divided channels "gradually dropped into one, and that was done by cutting timber down, dropping it;" that witness's father, speaking of the time subsequent to 1835, said that the bayou always went dry in summer.

Jehu A. Angel (1830-1888.)

Jehu A. Angel, who was seventy-four years of age at the time of testifying, states (Record pp. 107, 108.)

that he has been familiar with "Green River Island" since 1830; that at that time in times of low water, the bayou was dry at the head of the island, and that water would stand in places throughout the remaining length of the bayou; that in that year there were two or three places where persons crossed in wagons.

Hampton H. Angel (1830-1888).

Hampton H. Angel, who was seventy-two years of age at the time of testifying, states (Record pp. 108-114.), that he has been familiar with "Green River Island" since 1830; that at that time the bayou was dry in the time of low water at its head, and that the water stood in holes throughout the bayou, below the head; that at that time there were trees from eighteen inches to two feet in diameter on the banks of the bayou, and that the width of the bayou channel between such trees was not more than fifty yards.

James Hayhurst (1820-1888.)

James Hayhurst, who was seventy-eight years of age at the time of testifying, states (Record pp. 114-117.), that he has been familiar with "Green River Island" since 1820, and that in that and the succeeding years in summer time it was "dry, all but the holes;" that there were then many crossings of the bayou; that large trees then stood "right on the bank," which "did not appear to wash away," and that "the trees generally hung over the water," and that the space across the bayou between these large trees was in some places not more than fifty yards.

Milton H. Tribble (1837-1888.)

Milton H. Tribble, who was sixty-nine years of age at the time of testifying, states (Record pp. 118-122),

that he has been familiar with "Green River Island" since 1837; that the bayou could then be crossed on foot and by wagons in time of low water, and that there were then four crossings where people drove across; that these crossings were on dry ground and not on structures made for the purpose; that the standing trees on opposite sides of the slough were only about sixty or seventy feet distant from each other.

John M. Sampson (1843-1888.)

John M. Sampson, who was seventy-one years of age at the time of testifying, states (Record pp, 122, 123.) that he has been familiar with "Green River Island" since 1843; that at that time, in times of low water, there were five or six crossings on solid ground across ths bayou, on which teams could cross.

Jenkins Hugo (1836–1888.)

Jenkins Hugo, who was seventy-eight years of age at the time of testifying, states, (Record, pp. 123–126,) that he has been familiar with "Green River Island" since 1836; that in time of low water "there were little pools of water here and there along it" and it would have taken "at least fifteen or twenty feet of water in the river for water to run in through the head of that chute."

William Reaves (1832–1888.)

William Reaves, who was seventy-three years of age at the time of testifying, states, (Record, pp. 127–129,) that he saw the bayou in July, 1832, just after the flood in the spring of 1832, which was "the greatest" flood "for one hundred years, excepting the flood of 1884" and that it ceased to run part of the time and stood in ponds in heavy washouts; "where it was run-

ing in some places it might be seeping along a little but you could walk over many places;" that there were twenty such places; that, "between those deep washouts or holes, there was dry, sandy bottom frequently cropping out, where teams could cross and footmen could cross if they chose;" that "trees sometimes overlapped" the channel, "and at other times there were logs and drift so that boats could not go in the channel."

Mrs. Paulina McAllister (1831–1888.)

Mrs. Paulina McAllister, who was eighty-seven years of age at the time of testifying, states, (Record, pp. 134–136,) that she has been familiar with "Green River Island" since 1832, and that then in time of low water the bayou was always dry and always passable; that it was "passable all along," and that she "never heard" of any hinderance "to people going over just as they pleased."

Edwin McJohnson (1851-1888.)

Edwin McJohnson, who was sixty-five years of age at the time of testifying, states (Record, pp. 136-142), that he has been familiar with "Green River Island" since 1831; that then in times of low water there were two main crossings and "other places they crossed with teams," and "there were places where the water stood;" that the bayou proper then was from twenty-five to fifty feet wide, and that timber "grew down so that some hung over the bayou, as it does in all those streams;" that the bayou would not be sufficiently full so that boats could be floated up it till the fall rains set in.

With the apparent intention of contradicting the testimony of the above witnesses, the State of Kentucky examined five witnesses at Evansville, to-wit:

William Wells, Samuel Butler, Lemuel Stansberry, William L. Stansberry and Dr. George W. Yates; also five witnesses at Henderson, Kentucky, to-wit: Philip D. Matthews, Samuel E. King, William Beach, John W. Beach and N. Perry Robinson.

The testimony of these witnesses strongly corroborated that given by the witnesses for the State of Indiana.

William Wells (1823-1888.)

William Wells, a resident of Henderson County, Ky., who was eighty years of age at the time of testifying, states (Record, pp. 246-258), that he has been familiar with "Green River Island" since 1823; that in that year "at the boating stage (of water in the river) you would see some banks or bars rise" in the bayou (A. to Q. 10, p. 247); that he "never saw it (the bayou) as deep at the head as the channel of the Ohio river;" that "at right low water" it (water) "did not" run through at the head of the bayou when he first knew it (A. to Q. 101); and that there were crossings for horses and wagons.

Samuel Butler (1838-1888.)

Samuel Butler, who was sixty-three years of age at the time of testifying, states (Record, pp. 259-264), that he has lived across the river from "Green River Island" (in Kentucky) and that he has been familiar with "Green River Island" for fifty years (since 1838); and that at his earliest recollection the bayou could be crossed in times of low water.

Lemuel Stansberry (1833-1888.)

Lemuel Stansberry, who was fifty-eight years of age at the time of testifying, states (Record pp. 264-280), that he lived fifty years on the "Green River Island" tract,

and (A. to Q. 7) that he never saw the bayou when the water did not run out at the mouth. He adds, "Whether it was running in at the head or not I would not say positive as to that, but certainly it was running out at the mouth." He further states on cross-examination, (A. to Q. 98 and 99, Record pp. 271, 272) that in his earliest days there were some few crossings in the bayou at very low water-mark. He also states (A. to Q. 181, Record p. 277) that in summer when he first knew the bayou there was standing water around "Buck Island;" also that in times of lowest water the water would stand in pools around "Buck Island" just as it would along the bayou (A. to Q. 186, 187, 188, Record p. 277).

William L. Stansberry (1853-1888).

William L. Stansberry, who was forty-five years of age at the time of testifying, states (Record pp. 280-293) that he has lived most of his life on "Green River Island" and that at the time of his earliest recollection there was no flow of water through the bayou, but only a drain from the springs along the side of the bayou at the highest places in the bayou channels. (A. to Q. 61, 62, 63, 64, 65, 66, 67, Record p. 284, cross-examination.)

Dr. George W. Yates (1845-1888.)

Dr George W. Yates, who was sixty-one years of age at the time of testifying, states (Record pp. 293-314) that he or his father have owned land at the head of "Green River Island" since 1847; that he has been familiar with "Green River Island" since 1845, and that at that time, when there was a depth of twenty-five or thirty feet of water in the river, the bayou would be about six or seven feet deep all the way through, and that it was deeper at the lower end than at the upper (A. to Q.

18 and 19); that there were large trees prior to 1850 leaning over the bayou on each side (A. to Q. 80, 81, 82. 83, 84, Record p. 300.)

Philip B. Matthews (1843-1888.)

Philip B. Matthews, a resident of Henderson, who was eighty-five years of age at the time of testifying states on cross-examination (Record pp. 319-330) that he never saw the "Green River Island" bayou in the summer time, and that he never was on "Green River Island" in his life; that in the winter of 1843 he passed through the bayou in a steamboat, which he judges would draw "seven or eight feet, or six or seven, or five or six."

Samuel E. King (1835–1888.)

Samuel E. King, a resident of Henderson, Ky., who was sixty-two years old at the time of testifying, states (Record pp. 321–342) that from 1835 to 1847 he lived on the Kentucky side of the Ohio river, nearly opposite the "Green River Island." On cross-examination he finally admits that he is unable to swear whether he ever went through the bayou in the months of July and August (A. to Q. 268, 269, 279, Record p. 340), or whether he ever saw the head of the island in times of lowest water (A. to Q. 178, Record p. 333); that he thinks there was a current at the head of the bayou, because "little drift and stuff were coming out at the mouth (Re-examination A. to Q. 78, Record p. 341.)

William Beach (1840–1888.)

William Beach, who was fifty years of age at the time of testifying, states (Record pp. 342–360) that he is a resident of Kentucky, and has at previous times lived on the "island" eighteen years; that at right dead low water there was no water running through the

bayou (A. to Q. 17, Record p. 343); that persons could cross "sometimes in dead summer, and may be sometimes in the fall" (A. to Q. 171, Record 354); that when he was living with Mrs. Aiken (from the time he was fourteen till he became twenty-one (A. to Q. 112, Record p. 350) that is, from 1848 to 1855, people crossed the bayou on horses or with wagons at "certain times of the year" and at some places they could cross on foot in summer (A. to Q. 174, 175, Record p. 354.)

John W. Beach (1834–1888.)

John W. Beach, a resident of Kentucky, who was sixty-two years of age at the time of testifying, states (Record pp. 360–370) that he has been familiar with "Green River Island" since 1834 (A. to Q. 14, Record p. 361); that there was no continuous flow of water in the bayou at extreme low water, but only when the river was at an ordinary, medium stage, and the highest part of the bayou was about two miles and a half or three miles below the head of the island (A. to Q. 37, 38, 39, 40, 41 and 42, Record pp. 363, 364.)

N. Perry Robinson (1834–1867.)

N. Perry Robinson, a resident of Kentucky, who was sixty-four years of age at the time of testifying, states (Record pp. 388–401) on cross-examination, that in 1833 and 1834 when he was nine and ten years of age, he lived in Evansville (A. to Q. 67, Record p. 393) and that his knowledge of the condition of the "Green River Island" bayou in those years was gained from his having made frequent fishing excursions with "four or five of us boys" up the bayou from Evansville in a skiff. (A. to Q. 157, Record p. 398, A. to Q. 188, Record p. 401.) Though, on cross-examination, he states that to the

best of his recollection, based upon his knowledge and observation as a boy nine or ten years of age, there was a continuous current of water through the bayou at all seasons of the year, he further states that he cannot say that in 1833 and 1834 he ever went through the bayou, but he knows that he was frequently up in it (from Evansville) a mile or two, or may be further, and fishing at all stages of water, and, he supposes, in all the summer months (A. to Q. 184, 185, 186, 187 and 188, Record pp. 400, 401) that he never went up the bayou in a skiff when the water was at a very low stage in the Ohio river. His testimony in regard to the first land crossings of the bayou is so confused that it is impossible to understand it, except that in 1852 there were two or three places where it could be crossed on horseback (A. to Q. 337, 138 and 139, Record p. 397.)

It is submitted, therefore, that, if the low water-mark on the northwest side of the Ohio river is the State boundary, the State of Indiana has shown, by living witnesses, that this line of low water-mark, since 1820, has been on the south margin of both the "Green River Island" tract and the "Buck Island" tract. The testimony referred to under the sixth point of this brief shows that the same state of facts existed between 1820 and 1816.

V.

IF IT BE NECESSARY FOR THE PURPOSE OF DETERMINING THE STATE BOUNDARY TO EXAMINE INTO THE LOCATION OF THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER AS IT EXISTED PRIOR TO 1816, DID THE UNITED STATES SURVEY OF 1806, A MEANDER LINE OF WHICH RAN ALONG THE NORTH SIDE OF THE "GREEN RIVER ISLAND"

TRACT AND THE "BUCK ISLAND" TRACT, AFFECT THE LOCATION OF THE STATE BOUNDARY LINE?

It appears from the copy of a patent introduced in evidence by the State of Kentucky (Record p. 409) issued to one John Slaughter, February 10, 1790, by the State of Virginia, that a military survey was made for said Slaughter on the 1st day of March, 1785, of 600 acres of land "lying and being in the district set apart for the soldiers of the Virginia Continental Line, on the first large island in the Ohio below the mouth of Green river."

In November, 1804, and August, 1805, upon the order of the Henderson County Court, in alleged pursuance of the then existing land laws of Kentucky, surveys were made by surveyors of Kentucky of 1,000 acres of land on the "Green River Island" tract claimed by John Nancarrow, Nathan Walden and Russell Hewitt. (Record pp. 437–440.)

The survey of the United States of the land northwest of the Ohio River in the Indiana Territory was authorized by the act of Congress of March 26, 1804. This act provided that "the powers vested by law in the Surveyor-general shall extend over all the public lands of the United States to which the Indian title has been or shall hereafter be extinguished, north of the River Ohio, and east of the River Mississippi: *Provided*, 'That such tracts of land as are lawfully claimed by individuals within the said boundaries, and the title whereto has been or shall be recognized by the United States shall be laid out and surveyed at the expense of the parties respectively, in conformity with the true boundaries of such tracts.'"

The survey, under the act of 1804, in the vicinity of

the "Green River Island" tract, was made in the months of December, 1805, and April, 1806. (See copies of Field Notes of this survey, part of Exhibit Z of State of Kentucky, Record pp. 241–245.)

It is reasonably to be inferred, from these facts, that the inhabitants of the "Green River Island" tract, after the passage of the act of 1804, began to fear that when the United States Surveyor passed along the "Green River Island" tract, he would include the tract in the territory surveyed by him, and sought to protect themselves by obtaining an order of the Court which the United States Surveyor would not dare to overrule.

By obtaining their rights from Kentucky, they obtained the land for nothing; whereas, had they allowed it to be surveyed as United States land, they would have had to buy it at government prices (not less than $2 per acre. See Sec. 5 of the act of 1804.)

Evidently the tactics pursued by the inhabitants on the "Green River Island" tract were successful, for when the United States survey was made, in 1806, the "Green River Island" tract was omitted from the surveyed territory and was treated as an island in the Ohio River by Jacob Fowler, the Deputy Surveyor who made the survey. The Surveyor laid off meander lines at points which he considered to be the bank of the bayou or channel north of the "Green River Island" tract and treated that bank as the bank of the Ohio River.

It was of course essential to the acceptance of his survey that the field notes should show the southern boundary of the tract surveyed to be on the Ohio river.

It is further to be remembered that the case of *Handly's Lessee* v. *Anthony*, in which the location of the boundary of the Northwest Territory on the south was

first discussed, was not decided till 1820, and that in 1806 a surveyor, whose duty it was to survey the land "to the northwest of the river Ohio," might well doubt his power to cross a bayou through which the waters of the Ohio ran at some seasons of the year, especially when by so doing he came in conflict with surveys authorized by a county court of the State of Kentucky.

The surveyor in his field notes treats the southern boundary lines of his survey as meander lines. (See field notes, Record, middle of page 244.)

Such lines, it is now conclusively settled, though for years the question was in doubt and greatly discussed, are not the metes of the territory inclosed. They merely determine the amount of money which the purchaser is to pay the United States Government, and the stream meandered is the true boundary.

Railroad Co. v. *Schurmeir*, 7 Wall., 272.

This seems always to have been the doctrine in Indiana and Kentucky.

Doe v. *Hildreth*, 2 Ind., 274.

Reed v. *Langford*, 3 J. J. Marshall, 420.

Considering, therefore, the uncertain state of the law, at the time of the United States survey of 1806, with regard to the meaning of the words "to the northwest of the river Ohio;" considering also the fact that there was an outstanding Virginia patent on a part of the "Green River Island" tract (the validity of which will be considered later); considering also that the Henderson County Court of Kentucky had taken upon itself to allow surveys to be made on the "Green River Island" tract by Kentucky surveyors, thus incidentally determining that the "Green River Island" tract was

not "to the northwest of the river Ohio;" considering also that, for the United States surveyor to have surveyed the "Green River Island" tract at that time would have required of him the determination of a great question which is yet undetermined; considering also that the surveyor of the United States, in going on the "Green River Island" tract to make surveys over the Kentucky surveys would have doubtless exposed himself to personal violence and ejection from the land, it is not to be wondered that he accepted the interpretation of the words, "to the northwest of the river Ohio," placed upon them by the Kentucky Courts, and made return that, in his individual opinion, the bank of the bayou was the bank of the Ohio, and that his superiors did not question his survey.

It is submitted, therefore, that the above considerations greatly weaken, if they do not totally destroy any evidential force that the United States survey of 1806 may be claimed to have, as bearing upon the question of the location of the low water-mark, in 1806, with relation to the "Green River Island" tract.

As evidence in itself of the boundary between the States, it is absolutely worthless, since meander lines are not intended to show the low water-mark, but only to approximately determine the location of the banks of the stream meandered.

Railroad v. *Schumeir*, 7 Wall, 272.

VI.

IF THE STATE BOUNDARY LINE WAS NOT DEFINITELY FIXED AT THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER, IN 1816, BUT WAS SO FIXED BY THE DEED OF CESSION FROM VIRGINIA TO THE UNITED STATES IN 1784, AND BY

THE ACT OF CESSION OF VIRGINIA IN 1783, WAS THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER, IN 1783 AND 1784, ON THE NORTH OR THE SOUTH MARGIN OF THE "GREEN RIVER ISLAND" TRACT AND THE "BUCK ISLAND" TRACT, AND HAS IT EVER SINCE REMAINED AS IT EXISTED IN 1783 AND 1784?

As bearing upon the question of the location of the low water-mark in the proximity of the "Green River Island" tract, between 1791 and 1843, the State of Indiana introduced the depositions of eleven persons given in the case of *Garrett* v. *McClain et al.*, in the Henderson Circuit Court, October 19, 1843, all of said persons being deceased at the time when the depositions were introduced as evidence (Record pp. 221–228.)

The facts of that case were as follows: On the 5th day of November, 1821, the heirs of John Slaughter brought an ejectment suit in the United States Circuit Court for the District of Kentucky, at Frankfort, to recover possession of six hundred acres on the "Green River Island" tract granted by Virginia to John Slaughter in 1790. The defendants in the suit were John Garrett, George Bohall, Robert G. Slayden, Ann Ellsworth and Catharine Olds, doubtless citizens of Kentucky who were claiming under the warrants issued by the Henderson Circuit Court in 1804 (Record pp. 436–441), or by possession, as they do not appear to have been patentees of Kentucky, and the copies of deeds introduced by the State of Kentucky (Record pp. 440–536) do not show conveyances to them by patentees of Kentucky.

This case lay in Court thirteen years, till November Term, 1834, when the plaintiff finally discontinued his suit against Robert Slayden, and, apparently on failure of defendants to appear at the trial, obtained a verdict

in his favor and one cent damages, on which the Court rendered judgment that the heirs recover the possession of the 600 acres claimed, and awarded a writ of *habere facias possessionem*.

In this suit, one Laban Jones, was the plaintiff's attorney. (Copy of declaration, Record, p. 406.)

In 1841 one Levi Jones visited the people residing on the 600 acres on the "Green River Island" tract covered by the Slaughter patent, and claimed that he was the owner of the equitable title to the land patented by Virginia to John Slaughter under a bond executed to him by John Slaughter; that he brought the ejectment suit above referred to in the United States Circuit Court for the District of Kentucky, in the name of the heirs of John Slaughter. He therefore demanded the possession of the land or that the occupants should settle with him for his rights under the bond of John Slaughter and the judgment in the ejectment suit.

Most of the occupants of the land covered by the Slaughter patent, yielded to his claim and paid him for a quit-claim of his rights, and an agreement from him that he would perfect his equitable title by obtaining a deed from Smith Slaughter.

One of these persons, John Garrett, who claimed title to one hundred acres included in the Slaughter patent, from persons claiming under patents from the State of Kentucky, agreed to pay Jones $1,000 and paid down $420 and gave his note for the balance.

Garrett afterwards refused to pay the note, and suit was brought against him in 1843 in the Henderson Circuit Court on the note by one Jackson McClain, to whom the note had been assigned, a judgment by default taken against Garrett and an execution issued thereon.

Thereupon Garrett, in 1843, brought an injunction suit against McClain, making Jones and the intermediate assignees of the note parties, asking that the execution of the above mentioned judgment be enjoined and that his contract with Jones be rescinded, because,

1. The process in the suit on the note "was served upon him at his own house and residence on the said one hundred acres of land mentioned in this bill, and not elsewhere, which said house and residence are situate, lying, and being to the northwest of the Ohio river, and north of the mouth of Green river, and as your orator verily believes and charges, beyond the territorial limits of the State of Kentucky, and consequently beyond the jurisdiction of the Court."

(Record, p. 200.)

2. "The said Slaughter, under whom Jones pretends to claim, never had any right or title to said land, because that the said military land warrant, under which the said land is said to have been located by Slaughter, did not authorize or permit land that lay to the northwest of the River Ohio and north of the mouth of Green river to be located." (Record, p. 200.)

The petitioner also asked that Jones be required to file as an Exhibit to his answer "a good and perfect title from the government to himself, for the inspection of the Court, in and to the one hundred acres of land conveyed by him to your orator as aforesaid."

The facts above set forth will be found stated in the bill in the case of *Garrett* v. *McClain et al.*, and in the amendment thereto. (Record pp. 199–202, 203.)

On this bill a preliminary injunction was granted. (Record pp. 198, 199.)

The answer of Jones (Record pp. 209, 210) does not

contain an express claim to title to the six hundred acres, though at the end he prays that the answer may be taken as a cross-bill and the title quieted in him if the injunction is granted. The gist of the answer is that Jones explained distinctly to Garrett what the nature of the title was—that it was an equitable title founded on the Slaughter patent and the judgment and writ of possession of the United States Circuit Court for the District of Kentucky. The answer of the other defendants is to the same effect.

The answer of McClain (Record p. 211) alleges the recovery of a judgment by him against Garrett and thus puts in issue the question of the jurisdiction of the Court.

In the case of *Garrett* v. *McClain* the question of the location of the low water-mark on the northwest side of the Ohio river was material (admitting that the low water-mark on the northwest side of the Ohio river was the State boundary) for two reasons:

1. Because it determined the jurisdiction of the Court over the person of the defendant Garrett in the action on the note (Henderson County being bounded by the State boundary line, Act of 1810, Gen. St. Ken., Rev. 1834, p. 268.)

2. Because it determined the validity of the title, the conveyance of which was alleged to be the consideration of the note.

Evidence bearing upon this question was introduced on both sides, and as a result of the trial of the whole case, the preliminary injunction was dissolved and a permanent injunction against the execution of the judgment at law denied, the Kentucky Court thus asserting its jurisdiction over the "Green River Island" tract.

For such a decision at that time, a *nisi prius* Court of Kentucky cannot be blamed, in view of the dispute which doubtless then existed, (and which led to fighting and bloodshed in 1848, as appears from other parts of the testimony), as to the location of the boundary in the neighborhood of "Green River Island." The case did not go to the highest Court.

The depositions on behalf of plaintiff, Garrett, so far as they relate to the location the low water-mark in the neighborhood of the "Green River Island" tract were as follows:

William Whittlesey (1835–1843.)

William Whittlesey, who was forty years of age at time of testifying, and a resident of Indiana (Record p. 221), states that he has known the "tract of land called Green River Island" for eight years, and says that "water has never run through the bayou slew at low water since I have known it. The bayou slew is on the average from three to five chains wide; in many places it is grown up with cotton-wood trees of small size;" that the Ohio river opposite to the "Green River Island," and between it and the main land in Kentucky is from fifty to sixty-five chains wide. (Record p. 222.)

George Linxwyler (1806-1843.)

George Linxwyler, who was seventy-six years old at the time of testifying, and a resident of Kentucky (Record p. 222) states:

"In the year 1806 I lived on what is called "Green River Island." That was the first year that I knew it. So far back as I have known the Island the bayou slough dividing it from the main land on the Indiana side was dry in low water. A person could as early as 1806 cross over it on dry land almost the whole length

of the bayou, except that there was here and there a hole where there was a little pond of standing water. The main channel of the Ohio river at all stages of water ran between said island and the main land in Kentucky, and at low water the whole of the water of the Ohio river run between the island and the main land in the State of Kentucky."

Lewis James (1796—and witness thinks a few years earlier—1843.)

Lewis James, who was sixty years of age at the time of testifying, and a resident of Indiana, (Record p. 223) states:

"I have known the tract of land known as "Green River Island" ever since the year 1796, and I think a few years earlier. In high water flat boats and keel boats could pass through the bayou slough, but ever since I have known it it has went dry in low water. From 1796 to this time the bayou slough has been dry in low water in the Ohio River. At low water there has none of the water of the Ohio run through the bayou slough since I have known it. At ordinary low water all of the water of the Ohio river run between said island and the main land on the Kentucky side of the Ohio. The bayou slough between the island and the main land on the Indiana side could be crossed on dry land the whole length of it, except that here and there was an occasional pool of standing water."

Isaac Knight (1791-1843.)

Isaac Knight, who was sixty-four years of age at the time of testifying, and a resident of Kentucky, (Record p. 224) states:

"I have known the 'Green River Island' for fifty-

two years. I knew it before anybody ever lived upon it. I know that when I first visited the island fifty-two years ago this fall, that the bayou slough was dry. In 1810 and 1816 I well recollect that at low water in those years there was none of the waters of the Ohio that passed through the bayou slough. All of the water passed at low water in those years between the island and the main land in Kentucky. I have known it since then and know that at ordinary low water-mark none of the waters of the Ohio passed through the bayou. I have heard that boats passed through the slough at high water."

Clark McCollister (1803-1843.)

Clark McCollister, who was fifty-four years of age at the time of testifying, and a resident of Indiana, (Record p. 224) states:

"I know the land in question and have known it for the last forty years. I lived at the head of it, and in high water I have seen flat boats go down the bayou sloo and keel boats pass up through it in high water. In low water the bayou went dry and was dry the whole length of it, except here and there a little pool, ever since I have known it at low water each year; all the water of the Ohio river passed between said island and the main land in Kentucky."

Absalom Vann (1803–1843.)

Absalom Vann, who was fifty-nine years of age at the time of testifying and a resident of Indiana (Record p. 225.) states:

"I have known the tract of land known as 'Green River Island' for forty years. In the year 1803, in the fall, I know that the bayou sloo was dry, the whole length of it, except that there was here and there a pool

of standing water. In that year the whole of the water of the Ohio river at low water run between said island and the main land in Kentucky. I lived on the island nine years during that time. * * * Every year that I have known the island the bayou at ordinary low water was dry land."

William Wagnon (1807-1843.)

William Wagnon, who was sixty-six years of age at the time of testifying and a resident of Indiana (Record p. 255), states:

"I first became acquainted with 'Green River Island,' in the fall of 1807. During the fall I passed up in the bed of the bayou sloo running between said island and the main land in Indiana. The bayou was then dry, except that there was here and there a small pool; there was not then any of the waters of the Ohio running through said bayou at a middle stage of water —that is to say, when the water was flush in the river, but not over the banks. In the winter of 1808 or 9 I passed through said bayou in an empty canoe. In high water the water of the Ohio has generally run round through the bayou, but at low water every year that I have seen it since I have known it the bed has been as dry as any part of the main land, except the pools above referred to."

Matthias Whetstone (1810-1843.)

Matthias Whetstone, who was sixty-four years of age at the time of testifying and a resident of Indiana (Record p. 226), states:

"I have known 'Green River Island.' for thirty-three years; in low water the bayou running between said island and the main land in Indiana has every year

been dry since I have known it. When the water is low in the Ohio all of the water of the river runs between said island and the main land on the Kentucky side."

Jesse Lane (1817–1843.)

Jesse Lane, who was forty-four years of age at the time of testifying, and a resident of Indiana (Record pp. 226, 227) states:

"I have known 'Green River Island' since 1817. I have resided about fifteen years upon it and know every part of it. I have examined the map made a part of the deposition of Mr. Whitlesey, and believe it accurate and correct. The channel on the map marked 'bayou slew,' has been dry every year, since I have known it, when the water was low in the Ohio river. Every year for the last twenty-five or six years at low water all of the water of the Ohio river has run between said island and the main land on the Kentucky side, and at such stages none of it has passed through said bayou slough. The bayou slough is now filled up and grown up with timber, so that it is impassable for crafts, and is dry the principal part of the year. The water must now be considerably above a medium stage before the bottom of said bayou slough is covered with water."

Jonathan W. Cochran (1831–1843.)

Jonathan W. Cochran, who was twenty-three of age at the time of testifying and a resident of Indiana (Record p. 227) states:

That he "is acquainted with 'Green River Island' and has been for the last twelve years, and has lived either on it or close to it ever since. The bayou for the last twelve years has been dry for the principal part of the year. It is, and has been for twelve years last past dry, unless the water in the Ohio river was above a

medium stage. The bed of the bayou is now grown up with timber, and is not navigable any portion of the year, nor has it ever been navigable since I have known it."

John Parker (1815–1843.)

John Parker, who was forty-two years of age at the time of testifying and a resident of Indiana (Record p. 228) states:

That he "has known 'Green River Island' for the last twenty-eight years or thereabout, and that at a low stage of water the bayou slew went dry at low water. All of the water of the Ohio runs between said island and the main land in Kentucky and none of it run through the bayou slew; has seen one steamboat pass through it at high water. The bed of the bayou is now filled up and grown up with timber, and has not been navigable for the past fifteen years. None of the water of the Ohio river has for several years last past run through said bayou, unless the water in the Ohio was above medium stage."

Testimony was introduced by the State of Indiana showing that all the above named deponents were deceased. William Reavis, who was seventy-three years of age at the time of testifying and a resident of Evansville, Indiana (Record p. 127) testifies to the death of William Whittlesey, Jonathan Cochran, William Wagner (Wagnon), Isaac Knight, George Linxwyler, Matthias Whetstone, Lewis James, Clark McColister, Jesse Lane and John Parker. (Record pp. 147, 148.)

Ira Fairchild, who was seventy-three years of age at the time of testifying and a resident of Evansville, Indiana (Record p. 18) testifies to the death of Absalom Vann (Record p. 187.)

The State of Kentucky introduced the depositions of Abraham Franceway, Edmund Talbott, John E. McColister and Willis Sugg (Record, pp. 539-542), taken in the case of *Garrett* v. *McClain*. In only one of these depositions (that of Abraham Franceway, Record, p. 540), is the location of low water-mark on the northwest side of the Ohio mentioned. In that deposition, at the very end, the deponent says that (about 1803 and subsequently) "there was no growing timber in the channel and no obstructions of any kind in the said northern channel for many years after I knew it, only such as originated from extreme low water."

The depositions in the case of *Garrett* v. *McClain*, therefore, prove that the low water-mark of the Ohio river from 1791 to 1843 was south of the "Green River Island" and the "Buck Island" tracts.

For the purpose of corroborating the testimony of the living witnesses and the deponents in the case of *Garrett* v. *McClain*, the State of Indiana introduced in evidence a work called "The Western Navigator," published in 1822. This work was out of the control of the State of Indiana, but is in the Library of Congress. In accordance with a stipulation to that effect (Record, p. 126), the State of Indiana substituted in the record for the book itself the map in the book containing the "Green River Island" tract, accompanied by the certificate under oath, of the Librarian of Congress.

(Record, p. 126, map on opposite page marked "Exhibit F.")

This map, which was made in 1822, or prior thereto, shows "Green River" and "Evansville" and the tract called "Green River Island," but in place of a bayou or channel being shown on the north side of the "Green

River Island" tract, two ends of a bayou or channel are shown and between them is printed the words "Old channel filled up."

This book shows that in 1822 the navigators of the Ohio river considered that the "Green River Island" tract was above low water-mark on the northwest side of the Ohio river.

For the purpose of further corroborating the evidence of the deponents in the case of *Garrett* v. *McClain, et al.*, the State of Indiana introduced in evidence a book entitled "The Navigator," published in 1808. This book was also out of the control of the State of Indiana, but is in the Library of Congress, and, under the same stipulations as above, a copy of the portions of the book (including a map) relating to the "Green River Island" tract, was introduced as evidence in the Record, marked "Exhibit I" (Record, pp. 153, 154—map on p. opposite to p. 154.) The extract made by the Librarian of Congress contains the following words:

"Green River Island Nos. 75 and 76.

"Here are two islands opposite each other, one of which is six miles long and has six or eight families settled on it; channel left side of both.

This book shows that in 1808, though the navigators of the river considered the "Green River Island" tract and its tow-head as entitled to be called "islands" yet "the channel was to the left of both," that is, between the tow-head and Kentucky, exactly as it is now. Why they were called "islands" will become apparent from testimony which will be referred to later.

As further corroborating the evidence of the deponents in the case of *Garrett* v. *McClain, et al.*, the State of Indiana introduced in evidence a book entitled

"A Journey in North America," by General Victor Collot, published in Paris in 1826. This book was out of the control of the State of Indiana, but is in the library of Congress and under a stipulation similar to that mentioned above (Record p. 69) a copy of the portions of the book desired to be used in evidence, sworn to by the Librarian of Congress was introduced in evidence in lieu of the book. The certificate of the Librarian of Congress reads as follows:

"And I further certify that it appears from the author's statement in said work that General Callot and General Warin, his associate in the explorations of the Ohio, etc., left Philadelphia on the 21st of March, A. D. 1796, and reached the Monongahela after fourteen days' march, and completed their surveys down to Louisiana during the same year (1796), remaining at New Orleans until November 1, 1796.

"And I further certify that on pages 169 and 170 of said book are found the following quoted passages, viz: 'Green River, one of the great branches of the Ohio, is four hundred yards wide at its mouth and is navigable one hundred and fifty miles for barges drawing three feet of water. * * * Immediately after passing Green river we found two islands opposite to each other, one of which was nearly three miles long. One of these islands only is noted in the chart; the other has been entirely forgotten. The channel on the right, between the largest of these islands and the land is dry during the summer; that in the middle it is choked up with drift wood and sand banks. We took the channel on the left, and kept as close as possible to the bank, where we found fourteen, fifteen and eighteen feet of water.'"

For the purpose of identifying the "islands" referred to as the "Green River Island" tract and the "Tow-head" which now lies to the south of the head of the island (see map marked "Exhibit C") the State of Indiana introduced two maps made by General Collot, one contained in an "atlas" made by General Collot accompanying the above mentioned work. (Record opp. to pp. 70, 71.)

It thus appears that in 1796 the Green River Island bayou was "dry during the summer" and that hence the low water-mark on the northwest side of the Ohio river, in 1796, was, as at present, on the north margin of the "Green River Island" tract and the "Buck Island" tract.

It is submitted that the literature relating to the "Green River Island" tract corroborates the testimony of living persons and persons now deceased, but who, under oath and cross-examination testified in an action in which the questions involved in this case were necessarily involved, and that upon the testimony it is proved, without contradiction, that since 1791 the low water-mark on the northeast side of the Ohio river has been on the southern margin of the "Green River Island" tract.

Having carried the proof back to the first settlement of the "Green River Island" tract in 1791 it became impossible for the State of Indiana to prove the condition of the "Green River Island" tract between the years 1791 and 1783, except by the testimony of experts, founded on an examination of the geographical and geological surroundings and the character of the vegetation near the depression north of the "Green River Island" tract, through which the waters of the Ohio are claimed by the State of Kentucky to have once passed.

The first expert witness called by the State of Indiana was Dr. A. J. Phinney, who testified that he had been for eight years connected with the State Geological Survey of Indiana, and, during the year previous to testifying, with the United States Geological Survey, and that he made an examination of the "Green River Island" tract "for the purpose of determining its geological formation" just prior to testifying.

(Record pp. 81, 82.)

He states that the "Green River Island" tract lies at one side of a "flood plain" on the northern side of the Ohio river, which extends two miles north (*i. e.* into the State of Indiana) parallel with the "Green River Island" tract, and is bounded by what is now a cypress swamp, and is known as "Bee Slough," (Record p. 86), but which was, in the opinion of Dr. Phinney, in geological times, perhaps a channel of the Ohio river. To the north of "Bee Slough" are high bluff banks which from the northern limits of the "flood plain" or, as it is popularly called, "the bottoms" of the Ohio river. In other words, the "Green River Island" tract is a portion of the bottom lands north of the Ohio.

(Record p. 82, A. to Q. 9.)

(See Frontispiece.)

He further states that all the bottom land is furrowed with sloughs or depressions parallel with the general flow of the river, and that the "Green River Island" tract is also furrowed in the same manner as the adjoining bottoms.

(Record p. 83, A. to Q. 10.)

With respect to the question whether the "Green River Island" tract has ever been below low water-mark on the north side of the Ohio river, the opinion of Dr.

Phinney is in the negative. In his opinion the "Green River Island" bayou is "simply an overflow channel—an escape for the waters of the Ohio river at high water."

His conclusion is based upon the following facts and inferences:

1. *The character and location of the trees and stumps of trees north of the "Green River Island" tract near the depression called the "Green River Island bayou."*

Dr. Phinney states that he found trees on both sides of the bayou—"large trees, ranging from two and a half to probably five feet and a half in diameter, situated close to the bayou." This fact, he says, would be evidence that during the life time of those trees the channel had been a small channel. (Record p. 83, A. to Q. 12.) He further says, "The presence of those trees upon the sides of the bayou show not only a narrow channel, but they show that there had been no continuous flow of water during the lifetime of those trees."

(Record p. 83, A. to Q. 12.)

The oldest of the trees referred to witness estimates to be 200 years of age.

(Record p. 84, A. to Q. 18.)

2. *The Character of the Depression.*

The witness states that, inasmuch as the distance from the head to the foot of the "Green River Island" tract by the bayou is only about two-thirds or three-fourths of the distance by the main river, the water would have a tendency if the bottom of the bayou had ever been as low as low water-mark to have remained in that channel, as the fall would have been greater than in the main river, and that hence the bayou would show evidences of the cutting and washing of rapidly moving

water, with well defined banks or terraces, and would have made a channel probably five or six times as wide as now exists between the old trees growing opposite to one another on the banks of the bayou, which are 120 or 130 feet apart.

(Record pp. 84, 85.)

Dr. Phinney states that, on the contrary, he finds nothing corresponding to a terrace formation (first and second banks, popularly called) on the sides of the bayou, and that if there had ever existed such terraces, there would be evidences of them remaining. He states (Record p. 88, A. to Q. 59) "There was a bank south and north of the main bayou, the main channel. There would be lower channels, but these channels would seem to come into the main channel, the main bayou, as if those had been formed by an overflow of water. The ridges between those depressions would be of about the same height. There is nothing there that in my opinion corresponds to the terrace formation. In fact, the whole terrace formation, the whole flood plain, is obscure; it is not plain. The most marked distinction is between the high land back of Bee slough and the plain to the south of it; but bordering the whole bayou I observed nothing that I would consider as a terrace formation proper, such as we find bordering the river."

3. *The character of the soil in the depression.*

Dr. Phinney also examined the soil about the roots of some of the trees growing along the banks of the bayou. At the foot of the large trees near cross-sections 12 and 13 (Exhibit "E," Record opposite p. 72) that is, about half way up the bayou, an examination was made, for the purpose of discovering how far below the ground the roots of the trees were, for the purpose of determin-

ing the amount of the fill at that point. The roots were found *one foot* below the ground. In reply to the question, "What would that indicate?" Dr. Phinney says: "It would indicate that there had been scarcely any fill at that point from the time the trees first began their existence; that the conditions that are present there now are essentially the same as those that were present when the trees began growing, years ago." An examination about the roots of trees at other points on the bayou showed approximately the same amount of fill.

The State of Indiana also introduced as an expert witness Prof. John M. Coulter, of Wabash College, Crawfordsville, Indiana, who testifies that he is a teacher of geology and botany; that in 1870 he was assistant geologist and afterwards botanist with the Hayden survey in the Rocky Mountains, and in 1871 conducted a geological survey down the Wabash Valley for the State; that he has published books on botany and the relations of botany to geology. (Record pp. 96–97.) This modest statement of the witness's attainments will doubtless be supplemented by the knowledge of the members of this Court of the reputation of the witness as a scientist and particularly as a botanist.

His opinion coincides with Dr. Phinney's at all points. Speaking of his examination of the "Green River Island" tract and the surrounding country, he says that "one of the first things I noticed after the very small and insufficient size of the channel was the heavy tree growth which was along its borders—cotton-wood and sycamores of large size. The largest which we measured was about five feet; that was a cotton-wood."

(Record p. 99, A. to Q. 23.)

Prof. Coulter states that he examined a sawed stump

which stood on the edge of the bank of the bayou about 30 feet from its middle line, and which must have been covered by the current, if there had ever, since the tree began its existence, been a channel of the Ohio river through the "bayou," and found it to be 200 years old. (Record, p. 99, A. to Q. 27.)

Prof. Coulter states that in his opinon the width of what could properly be considered as the "bayou," would average about one hundred and twenty feet.

(Record, p. 100, A. to Q. 30.]

Prof. Coulter, speaking of the character of the depression of bayon itself, says, in answer to the following questions.

"Q. 16. You may state what is the character of the land in the region in which you examined it?

"A. Well, the country from its frontage on the Ohio river and north to the high bluffs, that have been spoken of, is one alluvial, flat, river deposit and river material, made by the river and worked over by the river, and all on practically the same level excepting these furrows that are cut in by the overflow channels.

"Q. 17. You may explain more in detail the furrows cut in by the overflow channels.

"A. When the waters of the river become high enough to cover over the flood plain they do not move in one great sheet or volume. Wherever there is a line of least resistance it will furrow out channels. There are those flood channels beneath every great overflow, and these furrows had evidently been eaten out by such channels. They all tend in the same direction; all have a sort of common direction and ending.

"Q. 18. What is that direction with relation to Green River Island bayou?

"A. Practically parallel." (Record, p. 98. Q. 16, 17 and 18 and answers.)

Prof. Coulter further states that there is no evidence of there ever having been a terrace formation such as would have existed had there ever been a continuous flow through the "bayou" as a low water channel of the Ohio river. (Record, p. 100, A. to Q. 31, 32, 33, 34.)

He sums up his opinion as follows: (Record, p. 101, A. to Q. 37.)

"My opinion is that this so-called bayou channel, marked on map C as the bayou channel, is simply an overflow channel—one of the overflow channels from the Ohio river—and that it never could have been occupied by a continuous current of water within at least two hundred years. By continuous I mean, of course, through the year, not from one end to the other."

The State of Kentucky introduced no expert testimony.

Taking the uncontradicted testimony of the expert witnesses, in connection with the other testimony above referred to, it is submitted that the testimony shows, without contradiction, that since 1783 the low water-mark on the northwest side of the Ohio river has always been on the south margin of the "Green River Island" tract and the "Buck Island" tract.

The "Green River Island Bayou" is plainly a high water channel only, whose location was doubtless determined by the flow of the waters of the Green river against the waters of the Ohio at the time of high water, which created a flood current along the course of the bayou and washed out a fairly well defined channel.

It appears from the testimony of Dr. Yates, a wit-

ness called by the State of Kentucky, (Record p. 310, Q. 211-214 and answers), that there is a tradition that "the bayou was originally Green river and the Ohio had run through it." At very high water this tradition is in a sense true. Doubtless the waters flowing out of the mouth of the Green river do create on the north side of the "Green River Island" tract at times of high water a current which is approximately a continuation of the Green river itself. This explains why the tract was called "Green River Island," though the Green river empties into the Ohio on the Kentucky side of the river and above the head of the "Green River Island" tract.

Everything, therefore,—science, tradition and evidence of deceased and living persons,—points to the conclusion that the low water-mark on the northwest side of the Ohio river is, and since 1783, has been along the south margin of the "Green River Island" and the "Buck Island" tracts.

If the low water-mark on the northwest side of the Ohio river be the State boundary, therefore, the State boundary runs to the south of all the disputed tracts, leaving all these tracts within the jurisdiction of Indiana.

VII.

IF IT BE GRANTED THAT THE SOUTHERN BOUNDARY OF THE STATE OF INDIANA IS THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER, AND THAT THE LOW WATER-MARK ON THE NORTHWEST SIDE OF THE OHIO RIVER AT THE PRESENT TIME IS ON THE SOUTHERN MARGIN OF THE "GREEN RIVER ISLAND" TRACT AND THE "BUCK ISLAND" TRACT; BUT SINCE THE YEAR 1816 OR THE YEAR 1783, THE LOW WATER-MARK HAS BEEN ALONG THE NORTH MARGIN OF THOSE

TRACTS; HAS THE PROCESS BY WHICH THE LOCATION OF THE LOW WATER-MARK HAS CHANGED BEEN GRADUAL OR SUDDEN, AND HAS SUCH CHANGE BEEN A CHANGE TO A NEW CONDITION OR A RETURN TO AN OLD CONDITION? IF IT SHOULD BE FOUND THAT THE LOCATION OF THE LOW WATER-MARK HAS CHANGED, HAS THE STATE BOUNDARY LINE CHANGED ITS LOCATION IN CONSEQUENCE OF SUCH A CHANGE OF LOCATION OF THE LOW WATER-MARK?

If it had been shown that the "Green River Island" tract had, since the cession of 1783 (or since the admission of Indiana as a State in 1816), ever been below low water-mark on the northwest side of the Ohio river, it would doubtless be true that if the river had suddenly changed its course, and deserted the channel to the north of the "Green River Island" tract, the right of jurisdiction would have remained in Virginia, and would have been transferred by her to Kentucky. All the testimony in this case, however, contradicts any such supposition.

If any change has occurred, it has been so gradual, that no witness for either Indiana or Kentucky has been able to specify any particular year or even decade in which the Ohio river ceased to flow through the depression north of the "Green River Island" tract, as a channel of the river, and took the existing river channel as its course.

It being in evidence, and uncontradicted, (testimony of Dr. A. J. Phinney, Record p. 82, A. to Q. 9, and of Prof. John M. Coulter, Record p 98, A. to Q. 16 and 17) that the "Green River Island" tract, and the land to the north of it for two miles, is a part of the bottom land or the "flood-plain" of the Ohio river, the gradual recession of the water from even a low water-mark of the

Ohio river, would on the facts as they appear in this case leave the intermediate territory in Indiana, on the principle laid down in the case of *The State of Missouri* v. *The State of Kentucky*, 11 Wall. 395, p. 407.

In that case, where the question was as to the jurisdiction over an island in the Mississippi, on one side of which the channel had become enlarged, the Court entered upon an inquiry as to the formation of the land and character of the vegetation, for the purpose of determining whether the island had become detached from one side or the other of the river, and the consideration of the matters thus inquired into had an important bearing upon the decision of the Court, awarding jurisdiction of the island to the State of Kentucky, from which it appeared the island had become detached.

So in this case, it is proper for this Court to consider whether the "Green River Island" tract possesses the same character of land and vegetation as the main land of Indiana adjoining, for the purpose of determining whether the tract was ever a part of the main land of Indiana. If it should be found that the "Green River Island" tract was ever detached, it having been proved that it possesses the same character of soil and vegetation as the adjacent land in Indiana, the inference from the fact that it is no longer attached, would be of course that the main Ohio river had always flowed on the south side of the "Green River Island" tract and the "Buck Island" tract, as it does at present; and that the filling up of any channel which may have heretofore existed on the north side of the island, is rather a return to the original and true condition of things, than a change to a new condition.

While the principle of accretion is perhaps not

strictly applicable to a case of this kind, since there is no claim that the "Green River Island" tract is a piece of land actually formed by process of deposit within the *existing* banks of the Ohio river, yet, taking into consideration that the tract is a formation by the deposit of the Ohio river within its *geological* banks: that the location of the main river channel of the Ohio river has been within the recent historical and geological times south of the "Green River Island" tract where it now is; that if the "Green River Island" tract was ever a true island it was such from a temporary detachment from the territory of Indiana, it is right and proper that this Court in deciding a question of this kind, which is more properly a question of politics and diplomacy than a question of strict law, should base its decision upon the principles of justice, rather than upon strict and technical rules of law, and should dissolve any doubts which may arise as to the existence or non-existence of claimed facts, which by reason of the unsettled condition of the country cannot be proved with absolute accuracy, by calling to its assistance the principle of accretion, and if it should be of opinion that the low water-mark on the northwest side of the Ohio river is the boundary between the States of Indiana and Kentucky, should adjudge that the boundary of the State of Indiana, to which the disputed tracts are now finally and completely attached, is along the southern margin.

VIII.

IF THIS COURT SHOULD FIND THAT THE STATE BOUNDARY LINE IS ALONG THE NORTH MARGIN OF THE "GREEN RIVER ISLAND" TRACT, DOES IT ALSO EXTEND ALONG THE NORTH OR THE SOUTH MARGIN OF THE "BUCK ISLAND" TRACT BY REASON

OF THE FACT THAT THE "BUCK ISLAND" TRACT IS AN ACCRETION TO OR A PART OF THE "GREEN RIVER ISLAND" TRACT, OR AN ACCRETION TO OR A PART OF THE UNDISPUTED SOIL OF INDIANA?

It will be noticed that, in the above, two facts are assumed:

1. That the low water-mark on the northwest side of the Ohio river is the State boundary line.

2. That the low water-mark of the Ohio river is on the north margin of the "Green River Island" tract.

Both these facts the State of Indiana expressly denies. If, however, the facts thus assumed to exist were true, the testimony shows that the "Buck Island" tract is an accretion to the undisputed soil of Indiana, and that hence the State boundary line is upon its south margin.

The question as to the State boundary line near "Buck Island" was discussed in a suit in which one Garrett was plaintiff and one Yates was defendant, about the year 1850, and determined adversely to the claim of Yates, the owner of the head of the "Green River Island" tract, if he then claimed the "Buck Island" tract as an accretion to his land. But his son is a witness for Kentucky in this cause, and states that Yates did not claim the "Buck Island" tract as an accretion but because he had a deed from the former owner of the head of the "Green River Island" tract which gave him title to the land to the Indiana State line, which he believed was the meander line of the United States survey of 1806. (Record pp. 304, 305, 306.) The meander line of the United States survey of 1806 was along the north (Indiana) side of the "Buck Island" tract.

The claim of Kentucky in this case that the "Buck

Island" tract is an accretion to the "Green River Island" tract is therefore apparently an afterthought.

Garrett owned the land adjoining the "Buck Island" tract on the north, under title derived from the United States, and, in 1849, claimed the "Buck Island" tract as a part of his land. (Testimony of Mrs. Aiken, Record p. 45, A. to Q. 59.)

The question of the title to the land was raised in an action of trespass, Yates having gone on the land and cut down trees for fence rails, and Garrett having in his absence fenced the land and put in a crop, and Yates having attempted to remove the rails so cut. (Record p. 303, Testimony of Dr. Yates, A. to Q. 113, 118)

The case was tried in an Indiana Court (at Evansville) and that Court decided in favor of Garrett and gave him one cent damages. (Record p. 303, A. to Q. 116.)

Incidentally, as the deeds of Yates bounded his lands at the State line, the Court necessarily determined that the State line ran to the south of the "Buck Island" tract.

If the State of Kentucky could show that both channels of the bayou surrounding "Buck Island" were ever low water channels of the Ohio, the doctrine of accretion would not apply unless it could also show that the "Buck Island" tract was, in 1783, a sand-bar rising from the Ohio river between the divided channel and that it became connected with the "Green River Island" tract through the filling up of the channel between the "Buck Island" tract and the "Green River Island" tract, before it became connected with the soil of Indiana.

The witnesses for the State of Kentucky show the contrary to have been true.

Lemuel Stansberry, a witness for the State of Kentucky, states (Record, p. 277, A. to Q. 183): "Buck Island lies in here (indicating.) It is all filled in now—probably all the Indiana side is all filled in now level with the Indiana bank, which used to be the main channel. Now it is pretty nearly filled up level, so that it would be tenable probably. The channel washed out the lower side next to the Kentucky side."

William L. Stansberry, also a witness for Kentucky, states that the channel on the Indiana side of the "Buck Island" tract filled up first. (Record, p. 283, A. to Q. 48.)

This corresponds with the testimony of Dr. George W. Yates, the son of the defendant in *Garrett* v. *Yates*, another witness for Kentucky, that in the year 1855 the officers of Knight Township, Indiana, changed the location of the county road which had hitherto ran on the north (Indiana) side of the "Buck Island" tract to the south (Kentucky) side of the "Buck Island" tract, thus including the "Buck Island" tract within Knight Township, and Vanderburgh County, Indiana. (Record, pp. 289, 290, A. to Q. 145-162.)

When the road was made there was still a slough between the road and the end of the "Green River Island" tract. (Record, p. 290, A. to Q. 158.)

Assuming, therefore, that the line of low water-mark on the northwest side of the Ohio river is the State boundary line, and that that line of low water-mark extends along the north margin of the "Green River Island" tract, the State boundary line nevertheless extends along the south margin of the "Buck Island" tract, leaving that tract within the jurisdiction of Indiana.

IX.

HAS THE STATE OF KENTUCKY EXERCISED SOVEREIGNTY AND JURISDICTION OVER THE "GREEN RIVER ISLAND" TRACT OR THE "BUCK ISLAND" TRACT IN SUCH A MANNER AS TO AFFECT THE LOCATION OF THE STATE BOUNDARY LINE?

The State of Kentucky in its cross-bill alleges that "the State of Virginia retained full possession, jurisdiction and control of said island until the formation and admission of the State of Kentucky into the Union on the first day of June, 1792; that said island is, and has always been since that time within the territorial limits and jurisdiction of the State of Kentucky as they then existed and as they still exist; that from that time to the present she has claimed, and continually exercised her sovereign rights and authority over the same as fully as over any other portion of her territory; that owners of the soil thereon hold their title thereto under grants made by her as the original proprietor thereof; that the property thereon, amounting to many thousands of dollars in value, has always been assessed for taxation by her legally authorized officials, and the taxes thereon paid into her treasury; that the residents thereon, possessing the other necessary qualifications, have always voted at her elections as legal voters; that her Courts have always exercised undisputed jurisdiction, both civil and criminal, over the said island, and that her right so to do has hitherto always been recognized and acquiesced in by the said State of Indiana."

The "full possession, jurisdiction and control" which the State of Virginia is alleged to have retained after the cession of 1783, is not shown by the evidence.

The only evidence introduced by the State of Kentucky upon this subject, is a patent to one John Slaugh-

ter, issued May 10, 1790, and signed by Beverly Randolph, as Governor of Virginia, for six hundred acres of land "lying and being in the district set apart for the officers and soldiers of the Virginia Continental line, on the first large island in the Ohio below the mouth of Green River, and bounded as followeth," etc.

(Record p. 402.)

This patent was issued on a military warrant dated February 14, 1784, and on a survey made March 14, 1785. The patent was issued therefore, about five years after the survey was made.

(Record p. 409.)

An examination of the legislation of Virginia and the United States, between 1778 and 1790, shows that the issuing of this patent affords slight ground for claiming that Virginia exercised jurisdiction over the "Green River Island" tract.

By the land law of Virginia of 1779 the following tract of land was reserved for settlement by the "troops serving in the present war," viz: "Bounded by the Green River and a southeast course from the head thereof to the Cumberland mountains, with the said mountains to the Carolina line, with the Carolina line to the Cherokee or Tennessee river, with the said river to the Ohio river, and with the Ohio river to the said Green River."

(10 Hening's Va. St., p. 54.)

The amount of land allowed to each individual entitled by reason of his military service, to locate lands under this statute, was from 2,000 acres to 5,000 acres for commissioned officers, 400 acres for non-commissioned officers, and 200 acres for privates.

The amount of land required to satisfy all the claim-

ants was greater than that included in the territory above described, and in the Act of Conditional Cession of 1781, and in the Act of Cession of 1783, it was provided:

"That in case the quantity of good lands on the southeast side of the Ohio, upon the waters of Cumberland river, and between the Green river and the Tenisee river, which have been reserved by law for the Virginia troops upon Continental establishment, should from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency shall be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia."

The "Green River Island" tract is not within the district so set apart by Virginia for the "Virginia troops upon continental establishment" since it certainly cannot be said to be "on the southeast side of the Ohio," and it is north of a line extending from the junction of the Tennessee and Ohio rivers "with the Ohio river" to the Green river. This was alleged and proved in the case of *Garrett* v. *McClain* above referred to.

(See map of William Whittlesey, Exhibit Q.; Record, opp. p. 221. Deposition of William Whittlesey, Record, p. 222, A. to Q. 8.)

The military warrant issued to Slaughter in 1784, entitling him to locate land "in the district set apart for the officers and soldiers of the Continental line" did not therefore entitle him to locate his warrant on the "Green River Island" tract.

How then is the patent issued to him by Virginia, in 1790, for "a tract or parcel of land containing 600

acres by survey bearing date the first day of March, 1785, lying and being in the district set apart for the officers and soldiers of the Virginia Continental line, on the first large island in the Ohio below the mouth of Green river" to be explained? The following is doubtless the explanation:

Slaughter, holding a warrant for military services from the Virginia land office, would prefer to locate his warrants on land which could be entered in the Virginia land office, which was existing and in full operation, rather than undergo the necessary delay in obtaining title from the United States to the land in the military reservation northwest of the Ohio river.

The United States imposed so many formalities, as a prerequisite to obtaining title to land reserved on the northwest side of the Ohio river between the Little Miami and the Scioto rivers, as to deter the persons entitled from making the attempt to locate upon that territory.

When, therefore, the patent was issued to John Slaughter by Virginia, in 1790, the existing legislation both of Virginia and the United States, was of such a character as to induce the State of Virginia to endeavor to satisfy every claimant to military lands out of the territory on the southeast side of the Ohio river, and it is natural that the Governor, if his attention was particularly called to the matter, should have been inclined to treat the tract of land as within the district of Virginia set apart for its soldiers for the purpose of satislying a claimant under a military warrant of Virginia, who had made his survey in good season, especially when the tract of land covered by the patent was a tract of somewhat ambiguous character, and was called by

its inhabitants and the navigators of the river by a name which implied that it was an island in the Ohio river, caused in some way by the flow of the Green river. The fact that the patent was not granted until five years after the survey was made, can doubtless be explained by the fact that Slaughter, doubting the validity of his location, was waiting for more favorable legislation from the United States regarding the location of his claim upon the military reservation on the northwest side of the Ohio river, and that he waited as long as he dared, and until he was satisfied that at the next session of Congress no substantial relief would be granted, before having his patent issued to him on his previous survey. The result showed that his calculation upon the unfavorable action of Congress was correct, for within five months after the patent was issued, Congress passed the act of August 10, 1790, which imposed most burdensome formalities.

Under the land law of Virginia as it existed in 1790, the granting of a patent was little more than a license for the patentee to occupy if he could. The State made no survey, and the State officers doubtless never stopped to consider whether the land conveyed by the patent was within the boundary of the State or not. The patentee took the risk of locating on land outside the State boundary. That this patent was considered to convey a very weak title to the land conveyed by it is shown by the fact that Slaughter waited, before locating it, in 1785, for six years after the land office had been opened (the land office having been opened in 1779); that after locating his warrant by survey, he waited six years before he took out his patent; that after taking out his patent he made no claim to the land during his life;

that thirty-one years after the patent was granted, in 1821, the heirs of Slaughter nominally brought an action in ejectment for the recovery of the land under this patent (Record p. 405); that this suit was really brought by a speculator claiming title under a bond for a deed signed by Slaughter; that judgment was not rendered in that case till the suit had been in Court thirteen years, (in 1834) and then by default (Record p. 408); that possession was not demanded on the judgment in that suit till nine years after the judgment was rendered (in 1841, Record p. 210); that even then the patent was claimed to be worthless by persons claiming under patents from Kentucky. (Record pp. 199-201.)

Perhaps if there were any doubts on the part of the Virginia officials of their right to issue a patent covering the "Green River Island" tract, they were more ready to do so at the solicitation of Slaughter than of others since it appears that he was a commissioned officer, this survey covering six hundred acres and being issued only "in consideration of *part* of military warrant No. 2498." (Record p. 409.)

It is evident therefore, from the history of the proceedings under the patent to John Slaughter, that its issue under the circumstances above mentioned, is a fact of very slight value, or of no value at all, as evidence to prove that the State of Virginia exercised jurisdiction over the "Green River Island" tract.

The cross-bill of Kentucky places her claim of exercise of jurisdiction over the "Green River Island" tract as distinct from the exercise of jurisdiction by Virginia, over the "Green River Island" tract upon four grounds, viz:

The first ground is, "That the owners of soil thereon, hold their title thereto under grants made by her as the original proprietor thereof."

The evidence introduced by the State of Kentucky in support of this claim is as follows:

The land law of Kentucky authorized the County Courts to issue warrants to settlers. In the year 1804 the County Court for Henderson County granted land warrants to John Nancarrow and Nathan Walden, each of whom claimed 400 acres of land on the "Green River Island" tract "on account of settling the same in conformity to the several acts of Assembly for settling and improving the vacant lands" of Kentucky, and also the claim of Russell Hewitt to 200 acres "in addition to his former claim." (Record pp. 435-441.)

The Court in each case makes its ruling in the following form: "Satisfactory proof being made to the Court, they are *of opinion* that the said (claimant) hath a right to a settlement of four hundred acres of land, to include the above location and that a certificate issue accordingly." On such rulings, surveys for the said Nancarrow, Walden and Hewitt were made following the description contained in such rulings, in the years 1804 and 1805. (Record pp. 435-441.)

None of these lands so allowed by the Henderson County Court to be occupied were patented until 1819, when Gabriel Slaughter, Lieutenant-Governor and Acting Governor of Kentucky issued a patent for one hundred and twenty acres of the land included in the claim of Nathan Walden, "the same having been exposed to sale—for the non-payment of the fourth installment due thereon," to Samuel O. Barnett and Aeneas McCollister. (Record pp. 420, 421.)

On September 30, 1818, the year previous, the same person, Gabriel Slaughter, as Lieutenant-Governor and Acting Governor of Kentucky, had issued a patent in the name of the State of Kentucky to John Sladen (see copy of patent, Record p. 410) upon a Kentucky Land Office Warrant dated March 2, 1818, (Record pp. 424, 425) and a survey made upon such warrant on March 24, 1818.

(Record p. 424.)

It thus appears that until 1804, when the Henderson County Court was "of opinion" that certain persons had a right to a settlement of four hundred acres of land on the "Green River Island" tract the "squatters" on the "Green River Island" tract did not seek titles from Kentucky; and that until the year 1818, no warrant from the Kentucky Land Office was laid on the "Green River Island" tract, and no land on the "Green River Island" tract was patented. After that time Kentucky patents issued upon Kentucky Land Office Warrants came thick and fast.

The State of Kentucky has introduced in evidence copies of patents for land on the "Green River Island" tract, of the following dates, and for the following amounts of land:

John Slayden, Sept. 30, 1818 (Record p. 410) 400 acres.
Barnett & McCollister, June 4, 1819 (Record pp. 420, 421)..... 120 acres.
Robert Terry, June 24, 1825 (Record pp. 411, 412)..... 340 acres.
Gabriel G. Green and William Green, } May 8, 1826 (Record pp. 412, 413)..... 400 acres.
Robert Terry, June 6, 1826 (Record p. 414)... 81 acres.

Robert Terry, June 21, 1826 (Record p. 415)... 49 acres.

John E. McAllister, Lawrens C. McAllister, } May 4, 1834, (Record pp. 416, 417)..... 50 acres.

Jesse Lane, July 27, 1835 (Record p. 418)..... 150 acres.

Edmund Talbott and Willie Sugg, } July 14, 1841 (Record pp. 419, 420)..... 314 acres.

1804.

In 1841 the "Green River Island" tract probably consisted of just about 1804 acres. It now covers about 2,000 acres, and of late years has gained by accretion at its lower end. (Testimony of James D. Saunders, Record p. 188, Q. 37, p. 164, Q. 115.)

It thus appears that in the year 1841, there were Kentucky patents outstanding covering the whole of the "Green River Island" tract; that there were then also outstanding, warrants from the Henderson (Kentucky) County Court, issued in 1804, covering 1,000 acres on the "Green River Island" tract, on which warrants patents for only 120 acres were issued by Kentucky, and that there was then also outstanding a patent from the State of Virginia for 600 acres of the "Green River Island" tract.

Such a state of things proves too much. So far from proving that the judicial and executive officers of Virginia and Kentucky knowingly and intentionally exercised jurisdiction over "Green River Island," it proves that the whole process of land entries was reckless and unsystematic, and that the officers of the State of Virginia permitted individuals to make whatever claim they pleased, and issued patents and judicial warrants, which were nothing more than quit-claims from

the State, and which gave the claimants rights only against the State itself.

The historians confirm the correctness of this inference. Prof. Hinsdale, in "The Old Northwest," pp. 260, 261, says, speaking of the land laws of Kentucky and Virginia: "The State of Virginia made no surveys whatever before disposing of the lands to the settler or speculator. The prospective owner sought out a tract of land that pleased him, and caused a survey to be made and marked, the latter generally by 'blazing' the trees with a hatchet. The survey was then recorded in the State land-office, and became the basis for warrants covering the land. Such was the way in which the lands of West Virginia and Kentucky were 'taken up.' * * * This method gave the greatest scope to settlement. The pre-emptor was never obliged to wait for the surveyor. Such a system led to the 'running out' of all sorts of tracts of land. Half a dozen patents would sometimes be given for the same tract. Pieces of land, of all shapes and sizes, lay between the patents; and in time, as lands became more valuable, huge 'blanket' patents were thrown out to catch these pieces."

"Such a system naturally begot no end of litigation, and there remain in Kentucky curious vestiges of it, that Prof. Shaler thus describes:

"'Of all these conflicts the Virginia, and, following it, the Kentucky land-office, took no note. To this day one can, if he pleases to pay the costs, 'patent' any land that lies in Kentucky, and repeat the process on the same area each year. The State only guarantees the entry if the land is unpossessed under previous title of valid kind. In time a vast amount of litigation and

no end of trouble came out of this scheme. At this moment, owing to the absence of records, there are hundreds of thousands of acres in Kentucky over which no sort of ownership has ever been exercised. No taxes are collected on them. If they have ever been surveyed no one knows under what patents they are claimed.'"

(Shaler's "History of Kentucky," pp. 49-51.)

The State of Kentucky was formed June 1st, 1792. It issued its first patent for land on the "Green River Island" tract in 1818. Twenty-six years elapsed, therefore, before the executive officers of the State of Kentucky determined to issue patents for the land on the "Green River Island" tract. Yet it appears from the statement of Zadok Cramer, the author of "The Navigator," published in 1808, that at the time of publishing that book, there were "six or eight families settled" on the "Green River Island" tract.

(Record p, 165, lines 5-7.)

It is a curious fact that Gabriel Slaughter, as Lieutenant-Governor, and acting Governor of Kentucky, seems to have issued patents which exactly covered the land originally granted by Virginia to John Slaughter.

(See description in Virginia patent to Slaughter, Record p. 409; Kentucky patent to Slayden, Record p. 410; Kentucky patent to Barnet and McCollister, Record pp. 420 to 421; deeds from Slayden to McClain, Record p. 445; deed from Slayden to Slaton, Record p. 446; deed from McCollister to Barnett, Record p. 455.)

The Virginia patent to Slaughter covered an estimated 600 acres at the head of the "Green River Island" tract. The Slayden, and Barnett and McCollister

patents from Kentucky, covered 520 acres at the head of the "Green River Island" tract.

Gabriel Slaughter, as Lieutenant-Governor of Kentucky, doubtless had some purpose in thus endeavoring to destroy the title of John Slaughter, obtained from Virginia.

It has been shown above that the Virginia patent to John Slaughter, was really worthless, but, as it was outstanding, it doubtless prevented him from claiming the satisfaction of his military warrant out of the lands set apart for the Virginia soldiers in the Northwest Territory between the Little Miami and Scioto rivers.

The easiest way to annul the grant, was for Gabriel Slaughter, as acting Governor of Kentucky, to cover the land by Kentucky patents. This would enable John Slaughter, and his heirs and assigns, to claim either that they had no title at all, or that they had the best title, according as it appeared for their interests.

All the circumstances surrounding the original issue of the Kentucky patents, are consistent with the theory that doubts existed for twenty-six years on the part of the Governors of Kentucky as to their right to issue patents for land on the "Green River Island" tract, and that the doubt was finally dissolved by an acting Governor, who was, perhaps, interested in having the question settled one way or the other. A precedent having been once established, the subsequent Governors followed it, as was natural and perhaps proper, since the issuing of the first patent determined the position of Kentucky in the matter, and it was as proper to cover the whole tract with patents as to cover any part of it.

It is doubtless true that until 1818, the "Green

River Island" tract was covered with "squatters," who derived their title from no one, and could not obtain title from the United States government without having the survey of 1806 corrected, and without paying $2.00 per acre for their land. It is easy to see that they would be willing and anxious to take whatever title the State of Kentucky would give them, since it would cost them nothing, and could be obtained without the performance of any formalities.

Considering, therefore, the fact that, for twenty-six years, under a system of land laws which permitted the location of land wheresoever the claimant might see fit, no individual took out a patent from Kentucky upon the "Green River Island" though during that period there were from six to ten families settled upon it; considering, also, that the facts surrounding the issue of the first patent gave rise to the suspicion that the State officers issuing the patent may have had an interest in it; considering, also, the great looseness with which the patents were finally issued; considering, also, that it was for the pecuniary interest of the settlers on the island to take title from Kentucky rather than from the United States, and that they could not have obtained title from the United States without having the United States survey of 1806 corrected, it is submitted that the facts surrounding the issue of the Kentucky patents are such as to destroy the force of the issue of these patents as proof of the exercise of jurisdiction by Kentucky over the "Green River Island" tract.

2. The second claim of Kentucky of right to exercise jurisdiction over the "Green River Island" tract is, "that the property thereon, amounting to many thousands of dollars in value, has always been assessed

for taxation by her legally authorized officials, and the taxes thereon paid into her State treasury." This statement is not supported by the evidence. The State of Kentucky introduced in evidence a copy of the "Assessment of Lands on Green River Island, for taxation in Henderson County, Kentucky," &c.

(Record p. 543.)

This document, so far from showing that the property on the "Green River Island" tract *has always* been assessed for taxation by the Kentucky officials, shows that it was not taxed until the year 1819, and that at that time, although there were doubtless seven or eight families upon it, John Slayden, the first patentee from Kentucky alone was assessed on his four hundred acres of land. The document shows that no taxes whatever were levied in the year 1820, and that in the year 1821 only six persons were assessed for taxation, who had obtained patents from Kentucky.

The document further shows that no taxes whatever were levied for the year 1822 or 1823, and that in the year 1824 only 100 acres of land on the "Green River Island" tract were taxed at all. The document further shows that from 1825 to 1834 no taxes whatever were levied. From 1834 the assessments seem to have been made nearly every year, but the amount of land taxed varies from 95 acres to 1,300. The document further shows that in recent years the assessment of taxes has been extremely irregular, for some years the assessment being entirely omitted.

The acts of town or county officials have very slight evidential force, if they have any at all, as showing the exercise of jurisdiction by a State over a disputed territory. The town and county officers, and in

fact all executive officers of a State, act in a discretionary manner whenever they attempt to act within a territory which is in dispute, and their action is not the action of the State.

This has been held to be law in the case of the *State* v. *Young*, 46 Vermont, 565.

There is no evidence whatever except general statements on the part of one or two witnesses introduced by the State of Kentucky to show that the taxes which have been assessed have been paid.

It is submitted, therefore, that the claim of the State of Kentucky of the right to exercise jurisdiction by reason of the fact that her officials have always assessed taxes on the "Green River Island" tract, and that the inhabitants of that tract have always paid such taxes, is not made out.

3. The third ground on which the State of Kentucky claims to have acquired the right of jurisdiction over the "Green River Island" tract is, "that the residents thereon, possessing the other necessary qualifications, have always voted at her elections as legal voters." It appears that the residents on the "Green River Island" tract voted, when they voted at all, at the town of Henderson, some twenty miles away by the river. Admitting this to be true, it is of little or no effect as showing an exercise of jurisdiction by the State of Kentucky over the disputed tracts.

4. The fourth ground on which the State of Kentucky claims to have acquired the right of jurisdiction over the "Green River Island" tract is, "that her Courts have always exercised undisputed jurisdiction, both civil and criminal, over the said island."

The record in the case of *Garrett* v. *McClain*, which

case is referred to in a previous part of this brief, shows that the jurisdiction of the Kentucky Court was disputed in that very case. One of the grounds on which the injunction against the execution of the judgment was asked was, that the Kentucky Court which rendered the judgment had no jurisdiction over the "Green River Island" tract, because that tract was "beyond the territorial limits of the State of Kentucky."

(Record p. 200.)

It could not have been the duty of the residents upon the "Green River Island" tract to have resisted the officers of the Kentucky Courts. All that could be done to dispute the jurisdiction of the Kentucky Courts had to be done in Court.

But the action of a State Court, sustaining the acts of its officers, is of no greater effect than the action of a superior executive officer, sustaining the action of his inferior. In either case, a judicial question is assumed to be determined, which this Court alone possesses the power to finally determine.

It is submitted, therefore, that the actions of the executive and judicial officers of Kentucky have not been such as to have affected the right of jurisdiction over the disputed territory. It is submitted, further, that by no acts of the citizens of a State or by its judicial or executive officers can the right of jurisdiction be acquired, and that the fact that the citizens of a State or its executive or judicial officers have acted in a particular manner is of value as evidence only as corroborating in a greater or less degree evidence of an actual exercise of jurisdiction.

There is nothing in the decisions of this Court which countenances any other doctrine.

Chief Justice Marshall, in the case of *Handly's lessee v. Anthony*, (5th Wheaton,) 374, while discussing almost the same questions as are raised in this case, said: "It is a fact of no inconsiderable importance in this case, that the inhabitants of this land have uniformly considered themselves, and have been uniformly considered, both by Kentucky and Indiana, as belonging to the last mentioned State." It is quite evident from the reading of this extract in connection with the context, that Chief Justice Marshall did not consider the facts to which he refers as original evidence in the case, but only as corroborative of other facts which were properly treated as original evidence. So in this case, the State of Kentucky might claim the right to use this evidence to corroborate testimony introduced by her, to show that in 1783, (or 1816) the "Green River Island" tract was in fact below low water-mark on the north side of the Ohio river. This is in accordance with Chief Justice Marshall's language in the case above referred to. He says (p. 384), "The people of the vicinage, who viewed the river and all its changes, seem not to have considered this land as being an island of the Ohio, and as a part of Kentucky, but as lying on the northwestern side of the Ohio, and being a part of Indiana." But, as above shown, the State of Kentucky has introduced no evidence whatever, to show that in the year 1783, (or 1816) the "Green River Island" tract was in fact below low water-mark on the north side of the Ohio river.

In the case of *The State of Missouri* v. *The State of Kentucky*, 11 Wall. 395, pp. 401 and 402, where the question was whether Missouri or Kentucky owned Wolf Island in the Mississippi river, this Court referred to certain acts of citizens of Kentucky as showing that

Kentucky had always claimed exclusive possession, and always exercised jurisdiction over Wolf Island.

In that case, it appeared that a resident of the island had been elected to represent the adjoining county in Kentucky in the General Assembly of Kentucky, and had served in that capacity. This was a plain recognition by the Legislature of Kentucky that it considered Wolf Island as a part of the State of Kentucky. The Court, however, in that case, do not appear to consider the fact of exclusive jurisdiction by Kentucky as of great importance, for they say (p. 403, speaking by Justice Davis), "There is, therefore, nothing in this record that shows that Kentucky has not maintained for a long course of years, the exclusive possession and jurisdiction over this territory and the people who inhabit it. It remains to be seen whether she shall remain in possession and continue to exercise this jurisdiction, or whether she shall give way to Missouri."

The State of Kentucky in her cross-bill further claims, that the State of Indiana has always acquiesced in the claims of Kentucky to the "Green River Island" tract.

The State of Indiana did not acquiesce in the original issuing of the Virginia patent, since the State of Indiana did not exist at the time the Virginia patent was issued.

The first Kentucky patent was issued about two years after Indiana was formed. Indiana could have done nothing except to have applied to the proper authorities of the United States to have the survey of 1806 corrected, and a new survey made which should include the "Green River Island" tract. Even if this had been done and a new survey had been accomplished

without bloodshed, it would not have finally settled the controversy, or have made it at all the more possible for Indiana to exercise jurisdiction over the disputed territory.

There is, in fact, nothing for a State of this Union to do, if the officers of another State come upon its territory and intertere with its citizens, except to acquiesce, or fight. Surely, this Court will not look with less favor upon a State which has adopted the peaceful and Constitutional method of settling this controversy. The State of Indiana, through the Vanderburgh Circuit Court, on the 22d of March, 1847, protested against the claim of jurisdiction over the "Green River Island" tract set up by the Kentucky officials. On that day a criminal action was begun against George W. Boswell, as Assessor, for neglect of his duties. The record in this case, so far as now appears from the files in the Clerk's office of the Vanderburgh Circuit Court, appears on pages 176 and 177 of the Record. The indictment in the case is missing from the files, and the Deputy Clerk testifies that no papers except those of which a copy is given in this record, can be found in the office.

(Testimony of Anthony C. Hawkins, Record pp. 178 and 179.)

The judgment, a copy of which is given on page 177 of the Record, does not show the character of the neglect charged upon the assessor, but the State of Indiana supplemented this record by the testimony of Ira Fairchild, which appears on pages 179 to 181 of the Record.

It appears from his testimony that Boswell, as assessor, was indicted for not assessing property on the "Green River Island" tract.

Fairchild testifies that he was bailiff of the Court at that time, and thinks he heard the indictment read. The copy of the judgment shows that the Court convicted the assessor for neglect in the performance of his duties. So far, therefore, as the Circuit Court of Vanderburgh County, in which the "Green River Island" tract is located, could protest peaceably, it did protest in 1847.

So far as the "Buck Island" tract is concerned, the State of Kentucky cannot upon this record by any possibility claim that she has exercised jurisdiction to an extent greater than that has been exercised by the State of Indiana. The record shows little or nothing concerning the affairs on the "Buck Island" tract prior to the year 1847 or 1848. At that time, as before stated in the brief, a dispute arose between one Yates, who claimed the head of the "Green River Island" tract under a Kentucky patent, and that the "Buck Island" tract was a part of the head of the "Green River Island" tract, and one Garrett, who claimed under a grant from the United States, the land adjoining the "Buck Island" tract on the north, and that the "Buck Island" tract was a part of his land.

Garrett enclosed the "Buck Island" tract by a fence, and Yates, for the purpose of raising the question as to the right to the land, went upon the land, and took from it a large number of fence rails.

(Record, testimony of Mrs. Aiken, page 42 and 43. Testimony of Dr. George W. Yates, p. 304.)

It further appears by the testimony of Dr. Yates, (Record, p. 303,) that a county road, which originally ran on the North side of the "Buck Island" tract was about the year 1855, changed by the county commission-

ers of Vanderburgh County, so as to run on the south side of the "Buck Island" tract. Such action on the part of the county commissioners was of course justified only in case the whole of the "Buck Island" tract was a part of Vanderburgh County, Indiana.

It appears from the testimony of Dr. Yates, (Record, p. 303,) that a suit was brought against Yates by Garrett, for the trespass of Yates in taking away fence rails from the "Buck Island" tract, in the Vanderburgh Circuit Court, about the year 1848, which was not determined until the year 1855, but which was finally determined by the Vanderburgh Circuit Court in favor of Garrett, the Indiana claimant. Since the judgment in that suit, and the change of the road to the south side of the "Buck Island" tract, no attempt has ever been made, so far as the record in this case shows, on the part of the State of Kentucky or any of her officials, to exercise jurisdiction over the "Buck Island" tract.

It is submitted that, if it is possible for a State of this Union to gain rights of jurisdiction by occupancy, or by the exercise of jurisdiction, there must be some act of the Legislature of the State, declaring the right of the State to exercise jurisdiction within the disputed territory, and authorizing the officers of the State, counties and towns, to act within the disputed territory. That body alone represents the people of the State for the purpose of determining within what boundaries the jurisdiction of the State is to be exercised. After the Legislature has acted, the executive officers of the State, and of the counties, towns and cities of the State, may execute the laws enacted by the Legislature.

It is submitted, however, that it is impossible for a State of this Union to acquire a right of jurisdiction as

against another State, over a disputed territory, by any exercise of jurisdiction, however clear and however long continued. To permit a State to acquire jurisdiction by its own action as against another State, would be to apply the equitable doctrine of laches to dealings between sovereign States. Such a doctrine never has been and never could be admitted to exist by the States of this Union. It would be in violation of the common law maxim,—*nullum tempus occurrit regi.*

While a State may allow rights to be acquired against it by its own citizens if it so chooses, it is inconsistent with the idea of sovereignty that one State or Nation should acquire rights of territory and jurisdiction by the inaction of another State. The question of State boundaries is a question to be determined by the construction of written instruments, and the examination of the facts in connection therewith, and the application of the principles of law and equity so far as they are consistent with State sovereignty. If it should be admitted that there could be any exercise of jurisdiction or acquisition of territory through the action of one State, and the inaction of another, the result of the doctrine would be to produce disputes regarding the territory, which could finally be settled only by force, since States would not permit the Courts to determine claims to acquisition of territory.

Such a doctrine would also be subversive of Article I, Section 10, of the Constitution of the United States which provides that, "No State shall, without the consent of Congress, enter into any agreement or compact with another State." If the doctrine of laches or limitation is to apply as between States, it could only be sustained upon the theory upon which the doctrine

of laches or limitation is sustained as between individuals, that is, upon presumption of a prior grant. To hold, therefore, that a State might acquire territory and jurisdiction by its own action, would be practically to hold that one State might enter into compact or agreement with another State, without the consent of Congress, and that the right of jurisdiction which a State of this Union possesses, is a right which may be conveyed by the State without the consent of Congress.

In this particular case, an insuperable objection to any claim of Kentucky that she has acquired jurisdiction over the disputed tracts by occupancy and the laches of Indiana, if such right depends upon the presumption of a prior grant is, that a prior grant from Indiana is an impossibility for the reason that Indiana has never possessed any rights which she could convey.

The legal title to land within the limits of the Northwest Territory is in the United States and its grantees. The State of Indiana, by the act under which it was formed (Act of Congress of April 19, 1816) obtained only the right of jurisdiction over the territory within its boundaries. In that act, the only territory granted to the State was four sections of land for a State Capital (it being provided that the location of said four sections should be made prior to the public sale of the lands surrounding such location.)

It is, therefore, submitted that the proof offered by the State of Kentucky in this case falls short of proving an actual and intentional exercise of jurisdiction by the State of Kentucky over the disputed tracts, and acquiescence therein by the State of Indiana; and that if such actual and intentional exercise of jurisdiction over the disputed tracts by the State of Kentucky and such ac-

quiescence by the State of Indiana had been shown, it would not have affected the location of the boundary line as fixed by the statutes and the deed of cession, but would have been admissible only as corroborative of other facts, or as explaining an ambiguity.

XI.

HAVE THE STATES OF INDIANA AND KENTUCKY SO LEGISLATED, AND HAVE SUCH ACTS BEEN DONE UNDER SUCH LEGISLATION AS TO AFFECT THE LOCATION OF THE BOUNDARY LINE BETWEEN THE TWO STATES?

The Statute of Indiana, of February 27, 1875, referred to in the cross bill, (Record p. 10.), does not stand by itself. In the year 1873, the State of Kentucky had legislated in regard to the boundary line between the States near the "Green River Island" tract. The Statute of Kentucky relating to this matter was approved April 21st, 1873, and was as follows:

"An Act to fix and determine the boundary line between the States of Indiana and Kentucky above and near Evansville.

"WHEREAS, Difficulty has arisen between the owners of land in Indiana and Kentucky in regard to the boundary line between said States, and said difficulty involves the title to large tracts of land at or near the line between "Green River Island" and the State of Indiana; therefore,

"SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, that the Governor of the State be, and is hereby, empowered and directed, to select a commissioner, who shall be a resident of Kentucky, and a practical surveyor, who shall act with a similar person selected by the Governor of Indiana, and

such persons so selected shall make a survey of the line dividing said States, beginning as the head of the island known as "Green River Island" opposite, or nearly so, from the mouth of Green river; running thence in a direction down the Ohio river to the lower end of said island, upon a line dividing said island and the State of Kentucky from the State of Indiana. Said commissioners shall consult the surveys originally made by the United States government, if there be more than one, and they be not inconsistent with each other, and said commissioners shall be governed in running said line by such survey or surveys made by the Government of the United States.

"Within ten days after such survey, said commissioners shall reduce said survey to writing, causing the metes and bounds and land-marks to be particularly described, and sign the same, and acknowledge the same before any officer authorized to take acknowledgments of deeds, and duplicates of such written statements of survey, signed and acknowledged by the commissioners, shall be filed in the office of the Clerk of the Henderson County Court, and in the Auditor's office of Vanderburgh and Warrick counties, Indiana; and such written statement, or a copy duly certified by the Clerk of the said Henderson County Court, shall be conclusive evidence of the said line dividing said island, so called, from said State of Indiana, in any of the Courts of this State.

"SEC. 2. The commissioners to be appointed under this act shall report to the Governer, in writing, the result of the survey together with a plat of the same; and when said survey shall have been completed, the commissioner shall file his account with the Governor, and when the same shall be examined and approved by

him, the Auditor of Public Accounts is hereby authorized to draw his warrant on the Treasury for said amount in favor of the commissioner appointed: *Provided, however*, said amount shall not exceed the sum of two hundred and fifty dollars.

"SEC. 3. This act shall take effect and be in force from its passage. Approved April 21, 1873."

The statute of the State of Indiana of February 27, 1875, referred to in the cross-bill was as follows:

AN ACT to ascertain the location of the boundary line between the State of Indiana and Kentucky, above and near Evansville, and making the same evidence in any dispute, and declaring an emergency.

"(Approved February 27, 1875.)

"WHEREAS, Difficulty and dispute have arisen between the owners of land in Indiana and Kentucky, in regard to the boundary line between said States, and said difficulty involves the title to large tracts of land above, near the line between the Green River Island and the State of Indiana:

"SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, that the Governor be and is hereby empowered and directed to select a commissioner, who shall be a resident of the State of Indiana and a practical surveyor, who shall act with a similar commissioner to be appointed by the Governor of the State of Kentucky, and the two commissioners so selected, shall make a survey of the line dividing said States, beginning at the head of said Green River Island, near and opposite to the mouth of Green river, and running thence down the Ohio river to the lower end of said island.

"SEC. 2. In running said line the said commissioners shall consult and be governed by the surveys origi-

nally made by the Government of the United States, when such surveys are not inconsistent with each other, and they shall establish and mark proper monuments along said line, whereby the same may be plainly indicated and perpetuated.

"SEC. 3. Within ten days after making such survey and establishing said line, said commissioners shall reduce the same to writing, giving a full and plain description of all the courses and distances, and of the marks and monuments made and established, and sign and acknowledge the same before some officer authorized to take acknowledgments of deeds, which writing, so acknowledged, shall be recorded in the Recorder's office in the counties of Vanderburgh and Warrick, and the original filed in the office of the Secretary of State, and such writing, or the record thereof, shall be conclusive evidence in any of the Courts of this State of the boundary line between the State of Indiana and Kentucky, between the points on said Green River Island heretofore indicated.

"SEC. 4. There is hereby appropriated out of the moneys of the State, in the hands of the Treasurer, a sum not exceeding two hundred and fifty dollars, to pay for making said survey. After rendering the services provided for in this act, the Commissioners shall make proof to the Judge of the Circuit Court of Vanderburgh county of the value thereof, to which the said Judge shall certify, and upon the presentation of such certificate, the Auditor of the State shall draw his warrant in favor of said commissioner for amount so certified not exceeding the said sum of two hundred and fifty dollars.

"SEC. 5. WHEREAS, An emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage."

In pursuance of the Indiana statute, the Governor of Indiana (the late Thomas A. Hendricks), appointed August Pfafflin, of Evansville, Indiana, as commissioner to run the line; and in pursuance of the Kentucky statute, the Governor of Kentucky appointed D. N. Walden, of the county of Henderson, Kentucky, as commissioner on the part of Kentucky for the same purpose.

The copy of the commission of Mr. Pfafflin, is found on page 171 of the Record, and the copy of the commission of Mr. Walden is found on page 170 of the Record.

The Commissioners in 1875 made a survey and ran a line on the north side of both the "Green River Island" tract and the "Buck Island" tract. The line as run by these commissioners was the meander line of the United States Survey of 1806. It followed almost exactly the south line of the Vanderburgh County, Indiana, road, until it reached the "Buck Island" tract, at which point it continued on, on nearly a direct line to the river bank. By this survey the whole of the "Buck Island" tract and a large amount of land to the south of the road which had hitherto been considered the undisputed territory of Indiana, since even if the bayou were the Ohio river, the State of Indiana, of course, had jurisdiction to its low water-mark, was left within the State of Kentucky.

This survey was extremely unsatisfactory to the residents of Indiana who owned the land north of the "Green River Island" tract since it gave to Kentucky land to which, up to that time, no Kentuckian had ever made claim. The utmost claim that any person residing on the "Green River Island" tract had ever previously made was to the low water-mark on the north

side of the bayou, the bayou being treated as the Ohio river by the persons residing on the "Green River Island" tract. As above shown, one Yates, in 1849, had claimed the "Buck Island" tract on the theory that the meander line of the United States Survey of 1806 was the State boundary.

As a result of the complaints made to him by the land owners north of the "Green River Island" tract, Governor Hendricks, on the 28th of July, 1875, instructed Mr. Pfafflin to suspend any further action under the Act of February 27, 1875, until he might have the questions arising upon the survey thoroughly investigated. (See letter to Pfafflin, Record p. 189.) The survey of the commissioners was completed on the 17th day of July, 1875, and was reduced to writing by the commissioners on the 27th day of July, 1875. (Report of Commissioners, Record p. 169.) Consequently, the order of Governor Hendricks to the commissioner, instructing him to proceed no farther, was made on the very next day after the survey was reduced to writing, and, as afterwards appears, before the survey was filed and recorded as provided by the statute of February 27, 1875.

In the fall of 1875, doubtless on November 5, 1875, (Record p. 190) Governor Hendricks, in company with several of the State officers of Indiana, visited Evansville and examined the line as run by the commissioners. The State of Indiana introduced as a witness Azariah T. Whittlesey, Esq., who, at the time of this visit, was the private Secretary of Governor Hendricks, and who accompanied Governor Hendricks on this visit to Evansville. Mr. Whittlesey states (Record p. 95, A. to Q. 68) that "on the strength of personal observation made by

the Governor and State officers at that time, Governor Hendricks apprised Mr. Pfafflin, in this city, the city of Evansville, personally and in my presence, that the State of Indiana would not recognize the survey made by the commissioners; he also forbade the County Recorder from entering upon the records the survey made those commissioners. On returning to Indianapolis Governor Hendricks addressed a letter to Mr. Pfafflin, which I myself wrote, signed by the Governor."

This letter was copied upon the executive records in the Governor's office in the city of Indianapolis, and a duly authenticated copy of it was put in evidence by the State of Indiana. The letter was as follows:

"STATE OF INDIANA, EXECUTIVE DEPARTMENT,
INDIANAPOLIS, November 12, 1875.

"*August Pfafflin, Esq., Evansville, Indiana:*

"DEAR SIR:—On the 28th of July last I instructed you to suspend any further action under the act of February 27, 1875, until I might have the questions arising upon the survey thoroughly investigated. I have received no reply from you or report of your proceedings up to that time. On the 5th instant, in company with the State officers, I visited the locality of the survey and found that you had adopted for the greater part the meander line run by the United States surveyor upon the bank of the Ohio river as controlling the survey, and had marked the same by stone monuments from a point above the head to a point opposite the foot of Green River Island.

"The line as marked by yourself and the commissioner appointed on the part of the Kentucky does not, in any part thereof, conform to the low water-mark of the river. The greatest part thereof is upon the bank

and the residue is at a distance from the bank, leaving a considerable tract of land between it and the river. In no part does the survey conform to what was low water-mark at the time the State was admitted. I think a casual observation will satisfy any one of that fact. But were it otherwise, and had the low water-mark become changed by the gradual accretion of land, the jurisdiction of the State would extend over the land so made, as also would the ownership of the individual proprietors whose purchases extended to the river. The act of the legislature requires you to consult and be governed by the surveys originally made by the United States, when not inconsistent with each other. If you found the meander line the only survey made by the United States it was proper for you to consult it, but I think it should not have been regarded as a line of boundary.

"The act of Congress providing for a State constitution and government and for the admission of Indiana into the Union, and the constitution of the State make the Ohio river the southern boundary. The Supreme Court of the United States has decided that the river not above low water-mark is the boundary, and not the meander lines that define its sinuosities. The Supreme Court of the United States thus describes their purposes and effect:

"'Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuousities of the banks of the stream and as the means of ascertaining the quantity of the land in the fraction subject to sale and which it is to be paid for by the purchasers. In preparing the official

plat from the first notes the meander line is represented as the border line of the stream, and shows to a demonstration that the water-course and not the meander line as actually run on the land is the bouadary.'

"If you found the meander line to be the United States survey which you were required to consult and by which you were required to be governed, then I think you should have given that survey its legal effect instead of following its location upon the bank.

"I think it entirely clear that no survey made by legislative authority can disturb the State boundary as fixed by the act of Congress and the State Constitution, nor impair the rights of individuals whose lands extend to the river, but such a survey as has been made may excite distrust and controversy. Before the execution of the act under which you were appointed shall be consummated opportunity should be given the Legislature to consider the subject and to take such action as may be found proper.

"I have, therefore, to instruct you to proceed no further under your appointment by filing for record any description of your survey or otherwise. The views which I have expressed are concurred in by the Attorney-General and by the other State officers.

"There seems to be an opinion quite general that your survey will have the effect to fix State jurisdiction over Green River Island. It is hardly necessary for me to say that there is no foundation for such opinion. The survey has no relation whatever to the question of jurisdiction over that island. Please make proof of the value of your services before the Judge of the Vanderburgh Circuit Court, as required by the act, that the amount by him approved within the limit of the appro-

priation may be paid. Be pleased, also, to make a full report of your proceedings under your appointment.

"Very respectfully yours,

"THOMAS A. HENDRICKS,

"Governor of Indiana."

(Record, p. 190, 191, 192.)

On account of this request of Governor Hendricks, the written survey was never "recorded in the Recorder's office of the counties of Vanderburgh and Warrick," nor was the "original" survey "filed in the office of the Secretary of State" of Indiana, as provided in the statute of 1875.

These facts are proved by the certificates of Charles F. Griffin, Secretary of State, Louis Sihler, Recorder of Vanderburgh county, and of Commodore Kelly, Recorder of Warrick county, annexed to the copy of the report of the commissioners introduced in evidence by the State of Indiana, to the effect that they have made thorough and diligent search of the records and files in their respective offices, and that from such search they are unable to find any evidence of the filing of record of the report.

(Record pp. 172, 174, 175.)

James D. Parvin, the Auditor of Vanderburgh county also certifies that the original of the report is on file in his office, and that he has made thorough and diligent search of the records in the Auditor's office and from such search he is unable to find any evidence of the recording of the report.

(Record pp. 172, 173.)

The Recorders of Vanderburgh and Warrick counties and the Auditor of Vanderburgh county (Messrs. Sihler, Kelly and Parvin) also testified orally

as witnesses for the State of Indiana to the facts certified to as above. (Record, testimony of Louis Sihler, pp. 195, 196; testimony of Commodore Kelly, pp. 165–167, and testimony of James D. Parvin, pp. 194, 195.)

The State of Indiana also introduced as a witness Sebastian Henrich, who was Deputy Auditor of Vanderburgh county during the term from 1874 to 1878. He testifies that he, as Deputy Auditor, received the report from Mr. Pfafflin, the commissioner, and placed the file mark "filed August 12, 1875, Joseph J. Reitz, A. V. C., per S. Henrich" upon it, and that the report was filed in the Auditor's office of Vanderburgh county on August 12, 1875.

(Record p. 198.)

Governor Hendricks doubtless considered the County Auditor's office a proper depository for the report, considering it merely as an interesting historical document, by reason of the peculiar duties imposed upon the County Auditors by the statutes of Indiana. By the statute then in force (now Sec. 5895, Revision of 1881), it was provided that the County Auditor "shall preserve the documents, books, records, maps and papers deposited in his office and deliver the same to his successor."

Governor Hendricks fully informed the Governor of Kentucky of his instruction of July 28th, 1875, to Commissioner Pfafflin to proceed no further. (See letter to Governor Leslie, Record p. 189.)

The report of the commissioners was, however, filed for record in the office of the Clerk of the Henderson Circuit Court on August 7, 1875. (Record p. 445.) Whether or not this was done by the order of the Governor of Kentucky, does not appear.

Nothing further appears to have been done publicly until the next session of the General Assembly of Indiana, in January, 1877, though the residents of Indiana near the "Green River Island" tract, continued active in their protests. Governor Hendricks referred to this in his message to the Legislature of 1877, which is given below, in the following words: "I will refer to your bodies a communication addressed to me by the citizens of this State, who claim that they are likely to become involved in expensive litigation because of this survey. They are owners of lands the boundary of which, in part, is the same with the State boundary." (Record p. 193.)

The portion of Governor Hendrick's message of January 1877, referring to this matter, is as follows:

"'*State Boundary Line.*'

"By the act of February 27, 1875, I was empowered and directed to select a commissioner, resident of this State and a practical surveyor, who should act with a similar commissioner to be appointed by the Governor of the State of Kentucky, to make a survey of the line dividing the States of Indiana and Kentucky so far as the same is opposite to Green River Island. In pursuance of that requirement I appointed August Pfafflin, who was the county surveyor of Vanderburgh county, as such commissioner and surveyor on the part of this State. By said act it was provided that the commissioners should consult and be governed by the surveys originally made by the government of the United States, and that their survey should be established and marked by proper monuments along the line. It was further provided that a written description of such survey should be recorded in the offices of the recorders of the

counties of Vanderburgh and Warrick, and that the original should be filed in the office of the Secretary of State, and that the same should be conclusive evidence in any of the courts of this State of the boundary line between said States opposite to the said island. During the progress of the survey I learned that the commissioners had adopted, as the only surveys made by the United States, the lines commonly known as the meander lines, and that such lines did not, in fact, conform to the true boundary lines of the State. Because of its importance I felt it my duty to make a personal examination of the survey, and for that purpose, in company with the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney-General, I visited the locality and carefully examined the survey. Green River Island lies a few miles above the city of Evansville, near the Indiana shore, and opposite to the counties of Vanderburgh and Warrick. The survey was made in conformity with the meander lines of the United States survey and it is for much of the distance upon the Indiana bank, and is, in many places, a number of rods above low water-mark. Could the boundary line become thus established, the effect would be to throw a narrow strip throughout the greater distance of the survey into the State of Kentucky, and at one point a number of acres, and to disturb the rights of individual proprietors. The lowest water-mark of the Ohio river is the established southern boundary of the State, and cannot, as I believe, be changed by the State legislation even if both States concur therein; but I thought such a survey so made might become the occasion of a conflict of State jurisdiction, and bring a confusion into the claims and rights of individuals. Therefore, with

the concurrence of the State officers, I directed the commissioner on our part to proceed no further. The survey had, in fact, been made and marked, but no record thereof had been made nor has yet been made in the counties of Vanderburgh and Warrick, as I understand, nor has the original survey been filed in the office of the Secretary of State. I am satisfied that the boundary line at that locality should be surveyed and marked, but it should be, in accordance with the established rights of the State, at low water-mark. I recommend that the law be so amended as to provide for a survey in accordance with the true boundary of the State, and that the survey already made be declared null and void. I will refer to your bodies a communication addressed to me by the citizens of this State, who claim that they are likely to become involved in expensive litigation because of this survey. They are owners of lands the boundary of which, in part, is the same with the State boundary. I ask your consideration of their petition, and should it be found that the action of the State in authorizing the survey has confused their rights and involved them in litigation it is but equitable and just that the State should be at the expense of employing counsel to represent them in that litigation."

(Record pp. 192, 193.)

In pursuance of the recommendations of Governor Hendricks in his message, the Legislature of Indiana of 1877 enacted two statutes—one repealing the statute of 1875, and the other providing for an amicable adjustment of the difficulty between the States by an agreement to be entered into by the Governors of the States and ratified by the State Legislatures and the Congress of the United States.

The first statute (Ch. 5, Special Session 1877) was as follows:

"AN ACT to repeal 'An Act to ascertain the location of the boundary line between the State of Indiana and Kentucky above and near Evansville, and making the same evidence in any dispute, and declaring an emergency,' and to declare void the survey and other acts of commissioners provided for by said Act.

"(Approved March 12, 1877.)

"SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the said act be and the same is hereby repealed; and the survey made by the commissioners provided for by said act, and all proceedings had, and acts performed by them, are hereby declared to be null and void, and shall not be admissible in evidence in any Court of this State, as proof of the boundary line between this State and the State of Kentucky.

"SEC. 2. WHEREAS, An emergency exists for the immediate taking effect of this act, therefore, the same shall be in force from and after its passage."

The second statute (Ch. 6, Special Session 1877) was as follows:

"AN ACT authorizing the acquisition of Green River Island, or to locate the true boundary line at said Island.

"(Approved March 14, 1877.)

"WHEREAS, by the cession of the State of Virginia to the United States, low water-mark on the northern side of the Ohio river became the boundary line between the territory northwest of the Ohio and the then district, now State of Kentucky, and the State of Virginia, in her act of December 18, 1789, for erecting said district into an independent State, provided that the jurisdiction

of the proposed State shall be concurrent only on said river with the States which might possess the opposite shore; and it is deemed important that the line of the river should continue to be the boundary line between the States of Indiana and Kentucky; and

"WHEREAS, a controversy has arisen between the citizens of the State of Kentucky and the citizens of this State, as to the true boundary line between the States at Green River Island, which has already caused vexation to the citizens of the respective States, and may lead to a conflict of jurisdiction between the States; and

"WHEREAS, The boundary line cannot be established by separate legislation of the States, so as to be conclusive and forever binding on them and their respective citizens, and the States are prohibited by the Constitution of the United States from entering into any agreement or compact without the consent of Congress; and

"WHEREAS, It is believed that the State of Kentucky fully concurs in the desire of the States to maintain the river line as the boundary, or that if this should not meet with her view, she will cheerfully co-operate with this State in establishing the true line, so as to be conclusive and forever binding on the States and the citizens thereof, therefore,

"SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Governor of this State be and he is hereby authorized to enter into negotiation, and make an agreement with the Governor of the State of Kentucky for the cession by the last mentioned State of all rights of jurisdiction and soil over and to Green River Island, and her claim to any ground on the Indiana side of the river at said island, or to establish

the line between said States at the aforesaid, either by surveys to be made in such manner as they may deem just to the States and the citizens thereof: *Provided*, That the Governor of Kentucky shall likewise be authorized to enter into such agreement by the Legislature of his State, and that the consent of Congress shall by them be obtained thereto: *And provided, further*, That if they should agree on a cession as aforesaid, the same shall not be binding on either State unless ratified by the Legislature of each at its first regular session thereafter.

"SEC. 2. That if neither a cession nor an agreement for establishing the boundary line can be effected, then the Attorney-General, when directed by the Governor, shall institute proceedings in Chancery in the Supreme Court of the United States against the State of Kentucky for the purpose of establishing said line.

"SEC. 3. Whereas an emergency exists for the immediate taking effect of this act, therefore the same shall be in force from and after its passage."

While the question as to the repeal of the Indiana statute of 1875 was pending before the Indiana Legislature, on February 9th, 1877, the State of Kentucky granted a patent for the narrow strip of territory included between the "Green River Island" tract and the line surveyed by the commissioners, and for the "Buck Island" tract. (See copy of patent to J. A. Coleman, Record pp. 422, 423.)

In the next year, 1878, the Legislature of Kentucky passed a statute in which, after reciting the Kentucky statute of 1873, the Indiana statute of 1875, the appointment of commissioners, their survey of the line, the reduction to writing of their report and their acknowledg-

ment of the same, and the filing of the same in the office of the Clerk of the Henderson county Court, and in the Auditor's office of Vanderburgh county, Indiana, provides: "That the report of the said commissioners be and the same is hereby ratified and confirmed; and that the said boundary line which divides the counties of Henderson, in the State of Kentucky and Vanderburgh, in the State of Indiana, is established as follows: (Setting out the monuments, courses and distances given in the commissioner's survey.)

"SEC. 2. That the survey, or a copy duly certified by the Clerk of the Henderson County Court, shall be conclusive evidence of the said boundary line so run, dividing the said island from the State of Indiana, in any of the Courts of this State."

It finally having become apparent to the State of Indiana that there was no hope of settling the difficulty with the State of Kentucky, except by litigation, the Legislature of Indiana, in 1881, passed the following:

"AN ACT to amend Section two (2) of an Act entitled 'An Act authorizing the acquisition of Green River Island, or to locate the true boundary line at said island,' approved March 14, 1877.

"(Approved April 15, 1881.)

"SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That Section two (2) of an act entitled an 'An Act authorizing the acquisition of Green River Island, or to locate the true boundary line at said island,' which was approved March 14, 1877, be amended to read as follows: That if neither a cession nor an agreement for establishing the boundary line can be effected, then the Attorney-General, when directed by the Governor, shall institute proceedings in chancery in

the Supreme Court of the United States against the State of Kentucky for the purpose of establishing said line, and the sum of $1,500 is hereby appropriated out of the State treasury to pay the expenses of such litigation, no part of which shall be used under pretext of paying attorney's fees. Said sum, or so much thereof as is necessary, shall be expended under and by direction of the Governor of the State.

"SEC. 2. WHEREAS, an emergency exists for the immediate taking effect of this act, therefore, the same shall be in force from and after its passage."

(Acts 1881, Ch. 57.)

This act having proved to be inadequate, the Legislature of Indiana, in 1887, passed the following statute:

"AN ACT in relation to Green River Island.

(Approved February 25, 1887.)

"SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Governor is authorized and directed to institute and prosecute in the Supreme Court of the United States, or other proper tribunal, in the name and on behalf of the State of Indiana, a suit in chancery, or other appropriate proceeding, against the State of Kentucky, for the purpose of determining and settling the boundary of the State of Indiana, with relation to Green River Island, and to determine and put at rest the questions which now exist as to whether said island is within the boundary and jurisdiction of the State of Indiana or of the State of Kentucky, and for that purpose the sum of $5,000 or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended under the direction of the Governor, to defray

the expenses, including reasonable attorney's fees, of such litigation.

"SEC. 2. All laws and parts of laws within the purview of this act are repealed."

"SEC. 3. There being an emergency, this act shall take effect and be in force from and after its passage."

Under this latter statute the then Governor of Indiana, the Hon. Isaac P. Gray, authorized the present suit.

It is to be noticed that the statute of 1875 was designed to furnish evidence in suits brought in the Courts of the State of Indiana. Such suits, of course, would be between private individuals and would have relation only to private boundaries. The title and preamble of the statute of 1875 plainly show that the State of Indiana intended to legislate only to this extent, and did not intend to make any compact with the State of Kentucky which should definitely fix the State boundary line as between itself and the State of Kentucky. The statute obligates the State of Indiana, under certain conditions, to all persons suing in its Courts. The State of Indiana, had the conditions of the statute been complied with, would have required its Courts and juries to have decided that a tract of land bounded by the State boundary line was bounded by the line fixed by the survey.

The title of the act is "An act to ascertain the location of the boundary line, &c., *and making the same evidence in any dispute.*"

The preamble is "Whereas, Difficulty and dispute have arisen between the *owners of land* in Indiana and Kentucky, in regard to the boundary line between said

States, and said difficulty involves *the title to large tracts of land*," &c.

The preamble of the Kentucky statute of 1873, above referred to, is in almost exactly the same words: "Whereas, Difficulty and dispute have arisen between *the owners of land* in Indiana and Kentucky in regard to the boundary line between said States, and said difficulty involves *the title to large tracts of land*," &c.

The statute of 1875, after providing for the reduction to writing of the survey made by the commissioners, and its signature and acknowledgment by the commissioners, requires it to be recorded "in the Recorder's office in the counties of Vanderburgh and Warrick, and the original filed in the office of the Secretary of State," and then proceeds as follows: "and such writing, or the record thereof, shall be conclusive evidence in any of the courts of this State of the boundary line between the States of Indiana and Kentucky, between the points on said Green River Island heretofore indicated."

The Kentucky statute likewise makes the commissioners' report, or a copy of it, "conclusive evidence of the said line dividing said Island, so called, from said State of Indiana, in any of the Courts of this State."

It is quite evident, therefore, that neither the State of Indiana nor the State of Kentucky ever intended to fix the boundary line between the States so as to obligate one State to the other, but that by these statutes above referred to the intention was to provide evidence of boundary in private disputes.

The report of commissioners, not recorded in the Recorder's office of Vanderburgh or Warrick county, or in the office of the Secretary of State, was not "such writing" as was to be "conclusive evidence" of the

boundary of the State "in any of the courts" of Indiana. It could not have been the intention of the Legislature of Indiana to allow a paper which was nowhere recorded in the State, and which was merely deposited for safe-keeping in the County Auditor's office of Vanderburgh county, as a public depository, to be "conclusive evidence" of private boundaries, when private boundaries are coterminous with the State boundary, in its courts. There was, in fact, no way in which it could be used as evidence. The County Auditor could not permit its production in court, nor could he certify to a copy of the same as its legal custodian, since the statute expressly made the Secretary of State its legal custodian.

The survey made by the commissioners under the act of 1875, therefore, was not at the time of the survey, and never has been, "conclusive evidence" either of private boundaries or of the State boundary line in the Indiana courts, because not recorded and filed as required by the statute of 1875.

It was, of course, impossible for the State of Kentucky, by its own legislative act, to extend its jurisdiction over, and title to, territory granted by written instrument by metes and bounds to the United States by the State of Virginia, which was also the grantor of Kentucky; and it was equally impossible for the State of Indiana, claiming under the same written instrument, and under the act of Congress conferring upon the State of Indiana the only right permitted by the deed of cession, viz.: the right of jurisdiction within certain specified boundaries, to extend, by its own legislative action, its jurisdiction beyond the boundaries so fixed. Governor Hendricks, in his letter to Commissioner Pfafflin, referring to this question, says, (Record pp. 191, 192):

"There seems to be an opinion quite general that your survey will have the effect to fix State jurisdiction over Green River Island. It is hardly necessary for me to say that there is no foundation for such opinion. The survey has no relation whatever to the question of jurisdiction over the island."

The survey of 1875, as a temporary expedient to establish the boundary lines of individuals claiming title under Indiana and Kentucky, whose deed called for the State boundary line as a private boundary, failed because the commissioners interpreted literally the words of the statute, "Said commissioners shall consult and be governed by the surveys originally made by the government of the United States," and treated the meander line of the United States survey of 1806 as the boundary line between the States, instead of attempting to discover the low water-mark of the Ohio river and run their line at such low water-mark. Doubtless they did not dare to take the responsibility of fixing the low water-mark, knowing that, to do so, would require them to survey on the south side of the "Green River Island" tract, and fearing that, in the excitement existing at the time of the survey, an attempt to survey a line on the south side of the "Green River Island" tract would lead to a conflict with the owners of the land thereon.

The Legislature of Indiana when it enacted, in 1875, the statute which provided that "in running said line, the said commissioners shall consult and be governed by the surveys originally made by the government of the United States, when such surveys are not inconsistent with each other, and they shall establish and mark proper monuments along said line, whereby the same may be plainly indicated and perpetuated," acted

upon a mistake of fact, in that they evidently supposed there were at least two surveys of the United States, whereas there was only one, that is to say, the survey of 1806; and upon a mistake of law, in that they evidently supposed the meander line of the United States survey along the Ohio river was intended as a boundary line, instead of a means for convenient calculation of the amount of land to be paid for by purchasers from the United States.

The effect of the legislation of Kentucky in 1873, and of Indiana in 1875, since the consent of Congress to it was not obtained, depends, therefore, entirely upon the question whether the meander line of the Ohio river in the United States survey of 1806 was or was not the State boundary line. If it was, it was competent for the two States to provide any evidence of it, as the actual and admitted boundary, which they saw fit.

That the meander line of the United States survey of 1806 was not and could not be the State boundary line is a question which would seem not to admit of argument. When this Court held, in the case of *Railroad Company* v. *Schurmeir*, 7 Wall. 272, that the meander lines of the United States surveys were run merely for the purpose of determining the amount of land for which the purchaser from the United States government should pay, it placed a final negative upon any claim that the meander line could ever be a State boundary line. There is not enough in the fact that a meander line was run along a river forming the boundary of a State of this Union to raise such a meander line from its humble office of determining whether a person should pay a few dollars, more or less, to the dignity of a boundary line between two States.

The absurdity of the survey of 1875 is apparent when it is considered that if the meander line of the United States survey of 1806 should have been adopted as the boundary of Indiana along the Ohio river, a large and valuable part of the city of Evansville and of the other towns and cities of Indiana on the Ohio river would have become a part of the State of Kentucky. If it was proper for the State boundary line to be fixed at the meander line adjacent to the "Green River Island" tract it was equally proper that it should be so fixed at all points along the Ohio river.

Governor Hendricks, as soon as he discovered the mistake and misunderstanding under which the Legislature had passed the statute of 1875, and realized the immensity of the claim of Kentucky if carried out to its full extent, did everything possible to preserve the rights of the State of Indiana. As above shown, he suspended the powers of the Indiana commissioner before any action had been taken concerning the recording or depositing of the written survey, and before any action had been taken by Kentucky under the survey. Later, after a thorough investigation, he entirely revoked the authority of the Indiana commissioner.

Mr. Pfafflin, the Commissioner for Indiana, acting under the directions of Governor Hendricks, never had the written survey "recorded in the Recorder's office in the counties of Vanderburgh and Warrick," and never had the "original filed in the office of the Secretary of State" of Indiana, both of which acts were, by the Indiana statute of 1875, made prerequisites to the taking effect of the written survey as "conclusive evidence in any of the Courts of this State of the boundary line between

the State of Indiana and Kentucky between the points of said 'Green River Island,' heretofore indicated."

The Legislature of Indiana, at its first opportunity did all in its power to preserve the rights of Indiana. At its next session after the passage of the act of 1875, acting on the recommendation of Governor Hendricks in his message to it, it repealed the statute of 1875, and immediately authorized the Governor, as the envoy of the State, to "enter into negotiation" and make an agreement with the Governor of Kentucky, "provided that the Governor of Kentucky shall likewise be authorized to enter into such agreement by the Legislature of his State, and that the consent of Congress shall by them be obtained thereto: and provided, further, that if they should agree on a cession as aforesaid, the same shall not be binding on either State unless ratified by the Legislature of each State at its first regular session thereafter."

This was a proper and dignified method of settling the disputed question. The act of 1877 provided for the making of a treaty between the States as sovereign nations, or as the Constitution of the United Utates expresses it, an "agreement or compact." The sovereign States are each to appoint envoys. These envoys are to enter into a provisional agreement for the cession of the right, title and interest of the State of Kentucky upon such terms as the envoys might agree upon. The envoys, in behalf of the States are to obtain the consent of Congress and the States are to ratify the provisional agreement and make it an agreement between the States. This statute was in accordance with the rules of international law when controversies relating to boundaries are desired to be settled by peaceful methods. It pos-

sessed the advantage over a settlement of the matter by litigation that it made it possible for the States to agree that the title to property within the disputed territory should not be affected by the agreement as to the location of the boundary line.

(See Act of Congress of February 26, 1881, in which it is stated that the agreement made between the commissioners for settling the boundary between New York and Connecticut expressly provided "That nothing in the foregoing agreement contained shall be construed to affect existing titles to property, corporeal or incorporeal, held under grants heretofore made by either of said States.")

The State of Kentucky, however, saw fit to reject the offer of compromise and upon stand its supposed rights.

The action of Kentucky in granting a patent for the strip of land between the bayou and the line of the survey of 1875, at the very time when Indiana was, with the best of reason, claiming that the line run by that survey was not the boundary line between the States, is doubtless to be explained upon the theory that such a grant was justified under the peculiar land system of that State, above referred to, under which the State patents whatever individuals claim to be unoccupied, and leaves the individual to hold his land against every one except the State of Kentucky. Upon any other theory, the action of the State would seem to be inexplicable, since it appears that Governor Hendricks had notified the Governor of Kentucky of his objections to the survey.

The State of Indiana has never recognized the survey of 1875 as valid for any purpose, and the only action

of the Legislature of the State of Kentucky which can be interpreted as a recognition or ratification of the survey, is the statute enacted by the State of Kentucky, three years after the survey was made, two years after the authority of the Indiana commissioner to act had been revoked, and a year after the Indiana statute providing for the survey had been repealed.

It has been shown above that the statute of 1873 of Kentucky and the statute of 1875 of Indiana purport on their face to furnish only a rule of evidence regarding the location of the state boundary, which shall be conclusive in trials within these States where the fact of the location of the State boundaries is a material fact.

It is, however, claimed by the State of Kentucky, in its cross bill, that the line, as ascertained by the commissioners, "is the original true boundary line of said State of Kentucky."

The State of Indiana claims that inasmuch as this is a case of *fixing a disputed boundary* and not of *locating the monuments of an admitted boundary*, the line could be finally determined only by the decision of this court, or by an agreement of the two States to which the consent of Congress had been obtained, since Art. 1, Sec. 10, prohibits a State from entering into any agreement or compact with another State without the consent of the Congress.

Not only has no compact or agreement ever been entered into between the States of Indiana and Kentucky, but two of the parties to the tripartite agreement, which the Constitution of the United States requires to be entered into when State boundaries are sought to be changed, have always been wanting. If the act of Indiana of 1875 was a proposition for an

agreement or compact, the State of Indiana has finally withdrawn from its proposition. Kentucky never accepted the formal proposition for an agreement or compact made by Indiana in 1877, and the United States has never been asked to be a party to any proposed agreement or compact.

Whether the act of Kentucky of 1873 and the act of Indiana of 1875 are to be treated as an attempted compact between the States or as designed to furnish a rule of evidence of private boundaries in the State Courts, both the acts are plainly unconstitutional and void because they contain no reservation of the rights of private land owners secured to them under patents from the sovereign State claiming jurisdiction of the soil at the time of issuing the patents, and hence violate the constitutional prohibition upon the States against passing laws impairing the obligation of contracts.

Governor Hendricks in his letter to Commissioner Pfafflin, above referred to, (Record p. 191) states the objection very clearly when he says: "I think it entirely clear that no survey made by legislative authority can disturb the State boundary as fixed by the act of Congress and the State constitution, nor impair the rights of individuals whose lands extend to the river."

If these statutes of Indiana and Kentucky made or attempted to make the meander line of the United States survey of 1806 the boundary line, they impaired the obligation of the contract made by the United States with the patentees from the United States adjacent to the "Green River Island" tract, on the north, since these statutes made no provision for compensation to these patentees, for the land taken from them between the bayou and the meander line of the survey of 1806.

It is submitted, therefore,—whether the act of Indiana of 1875 is to be treated as part of a proposed "agreement or compact" between the State of Indiana and the State of Kentucky, or whether it stands by itself as furnishing a proposed rule of evidence in the Indiana Courts—that the acts required to be performed as a prerequisite to the taking effect of the statute were never performed and never can be performed; that the statute itself is unconstitutional and void and that therefore neither this statute nor the acts done thereunder have any effect upon the location of the State boundary line.

CONCLUSION.

The State of Indiana asks for a decree establishing the boundary line with relation to the "Green River Island" tract and the "Buck Island" tract in the manner below described.

First. The State of Indiana asks for a decree establishing said boundary line along the middle line of the Ohio river, because according to the true construction, as the complainant believes, of the act of cession from Virginia to the United States of 1783, and the deed of cession from Virginia to the United States of 1784, and of the act of Congress of 1816, providing for the formation of the State of Indiana, the middle line of the Ohio river is the boundary line between the States of Indiana and Kentucky.

Second. If, however, this Court should be of the opinion that that construction of the said statutes and the said deed is not the proper construction, but that the boundary line between the States of Indiana and Kentucky is, as heretofore stated by this Court, along the line of the low water-mark on the northwest side of

the Ohio river, the State of Indiana asks for a decree establishing the boundary line upon the southern margin of the "Green River Island" tract, (including in the "Green River Island" tract the "Green River Island Tow-head" as an accretion), and the "Buck Island" tract,

1. Because the evidence shows that the present line of low water-mark on the northwest side of the Ohio river, is on the southern margin of these tracts.

2. Because, since 1816, when the State of Indiana was admitted into the Union, and its southern boundary fixed, by the consent of Kentucky, "on the south by the Ohio river," the evidence shows that the line of low water-mark on the northwest side of the Ohio river has been on the southern margin of the above mentioned tracts.

3. Because the United States survey of 1806, a meander line of which ran on the north of the disputed tracts, did not fix the State boundary line.

4. Because the evidence shows that, since 1783, when the boundary line along the Ohio river was first fixed by the act of cession from Virginia to the United States, the line of low water-mark on the northwest side of the Ohio river has been along the southern margin of the disputed tracts.

Third. If, however, this Court should, on the evidence, find that in 1783 or at any time subsequent thereto and prior to the bringing of this suit, the line of low water-mark on the northwest side of the Ohio river was on the north side of the disputed tracts, yet, as the evidence shows that such detachment of the disputed tracts from the undisputed soil of Indiana was only temporary, and that their present condition of

attachment to the undisputed soil of Indiana is their true and permanent condition, the State of Indiana asks for a decree establishing the State boundary line upon the southern margin of all the disputed tracts.

Fourth. If this Court should, on the evidence, find that, in 1783 (or 1816), the line of low water-mark on the northwest side of the Ohio river was on the north side of the "Green River Island" tract, and on both sides of the "Buck Island" tract, and that, therefore, the State boundary line is on the north side of the "Green River Island" tract, the State of Indiana asks for a decree establishing the State boundary line upon the southern margin of the "Buck Island" tract because the evidence shows that that tract is an accretion to the undisputed soil of Indiana.

The State of Indiana claims that the boundary line has not, by reason of the exercise of jurisdiction by the State of Kentucky under claim of right, up to the boundary line as claimed by the State of Kentucky, become changed or fixed, as against the State of Indiana, on the line as claimed by the State of Kentucky, because the evidence shows no act on the part of the State of Kentucky which amounts to a claim of right of jurisdiction, over the disputed tracts, and because it is impossible for one State of this Union to acquire rights of territory and jurisdiction, as against another State, otherwise than by the consent of both States and of the United States.

The State of Indiana claims that the State boundary line has not, by reason of the statute of 1875, and the proceedings had thereunder, become changed or fixed, as against the State of Indiana, because it is apparent on the face of the statute that it was enacted

under a misunderstanding of the facts relating to the survey made by the United States, and under a misapprehension of the legal effect of that survey; because the authority of the commissioner for the State of Indiana to act under the statute was revoked before the commissioner had fully executed his commission; because the conditions which were made prerequisites to the taking effect of the act never were fulfilled and never can be fulfilled, since the act was repealed at the earliest possible moment; because the State of Kentucky, in all the actions taken by it relating to the statute of 1875, acted with full knowledge of the revocation of the commissioner's authority, and of the proposed repeal of the statute, and took no legislative action until the statute had been repealed; and because the statute, if regarded as furnishing a rule of evidence to be used in the State Courts of Indiana, was unconstitutional and void as impairing the obligation of contracts, and, if regarded as a proposition for a compact or agreement between the States of Indiana and Kentucky, was unconstitutional and void both as impairing the obligations of contracts and because the consent of Congress was not and never can be obtained.

JOSEPH E. MCDONALD,
JOHN M. BUTLER,
ALPHEUS H. SNOW,
Solicitors for Complainant.

Respectfully submitted,
BY
ALPHEUS H. SNOW.

Indianapolis, Ind., March 24, 1890.

136-477

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

INDIANA

v.

KENTUCKY.

REPORT OF COMMISSIONERS.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

INDIANA
vs.
KENTUCKY.

Original.

To the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States:

The undersigned Commissioners, appointed by this honorable Court, in the above entitled cause, respectfully report, that, pursuant to the order made in said cause at the October term, 1895, continuing the Commission for the purpose therein stated, they gave notice for bids for the stone monuments and iron posts and setting of the same to mark the boundary line as established by the order of this Court. The Commission met at the custom house in the city of Evansville, Indiana, on the ninth day of April, 1897, and received and opened the bids for the above named material and work. The casting of the iron posts was

let to the Heilman Machine Works of Evansville, Indiana, for the sum of one hundred and twenty dollars ($120.00), it being the lowest and best bidder; the making and setting in place of the three stone monuments was let to F. J. Scholz & Son of Evansville, Indiana, for the sum of two hundred and forty-five dollars ($245.00), said firm being the lowest and best bidder; the setting of the sixteen iron posts was let to Eb. Cross, of Evansville, Indiana, for the sum of one hundred and ninety-seven dollars ($197.00), he being the lowest and best bidder. That contracts were made with each of said parties and bonds taken for the honest and faithful performance of the contracts. That on the 7th day of May, 1897, after the engineer in charge of the work had reported that the monuments had been erected, and posts placed in position, in conformity to the order of the Court, and the location on the established line of each monument and post had been verified by accurate observations and measurements, the Commission, accompanied by the engineer, visited the line, and by observations and measurements satisfied themselves of the accuracy of locations, and that the work of making and placing the boundary marks had been well done, and in accordance with the order of the Court.

We herewith attach, as a part of this report, the report of the engineer in charge of the works. Also a statement of expenses incurred and compensation of the Commissioners since making the former report, which we recommend be adjudged as cost equally against the parties to the suit. We further recommend that upon the confirmation of this report, a certified copy of the same be sent to the Governor of the State of Indiana,

and one to the Governor of the Commonwealth of Kentucky.

Your Commissioners therefore pray that this report be confirmed and they be discharged.

AMOS STICKNEY,
GUSTAVUS V. MENZIES,
GASTON M. ALVES,
Commissioners.

To the Honorable Commissioners on the Indiana and Kentucky Boundary Line at Green River Island.

GENTLEMEN:

In accordance with your instructions, I made plans and detailed drawings for stone and iron monuments, to permanently mark the line between the States of Indiana and Kentucky, at Green River Island, to replace the cedar posts as placed on it during the winter of 1896. Upon your approval of the plans and letting the contracts for the monuments, I proceeded to verify the line and angles to satisfy myself that no post had been moved. On the completion of the monuments I superintended the work of setting them.

The three monuments of stone are of sawed Green River Limestone, 18 inches in cross section and 6 feet in length. At the starting point on the section line between Sections 14 and 15, Town 7 South, Range 10 West, the monument has the word "Initial" on the side next Section 14, on the north side the word "Indiana," and on the south side the word "Kentucky" cut horizontally in the stone near the top, in Egyptian letters.

Near the midway distance along the line, and near the line between Sections 8 and 9, the second stone monument is set, with the word "Indiana" cut on the northerly side, and the word "Kentucky" cut on the southerly side, similar to the first monument.

At the terminal point, going down the Ohio River, the third stone monument is placed. The word "Indiana" is cut on the northeasterly side, the word "Kentucky" on the southwesterly side, and the word "Terminal" on the northwesterly side in the same style as the first monument.

For each of these monuments there was an excavation made six feet square and four feet deep, in the bottom of which one foot in thickness of concrete was placed and well rammed. On this the stone was placed on end and filled around with concrete, well rammed to the surface of the ground, leaving three feet of the stone above the ground.

At each of the 16 intermediate angles, iron monuments were placed. These are of cast iron, round, six inches in cross section, the top closed and a square pedestal cast on the lower end, the casting being ¾ of an inch thick. The word "Indiana" on the one side and the word "Kentucky" on the other, were cast in raised letters, the words reading downward.

An excavation was made for each of these, three feet square and three and one-half feet deep, and six inches of concrete well rammed in the bottom, on which the post was set and filled around with concrete to the surface of the ground, leaving three feet above ground. In four places where silt had accumulated rapidly on account of a depression in the ground, the excavation was made more shallow, but in each case the concrete bed is three and one-half feet in depth, and the earth banked around it to protect the concrete.

Great care was taken in having centers cut in each monument, and placing them on the exact angle point on the line as originally located.

Every monument was set and completed under my own personal supervision.

Respectfully submitted

EVANSVILLE, IND. C. C. GENUNG.

May 5th, 1897. C. E.

STATMENT

OF EXPENSES INCURRED AND COMPENSATION OF THE COMMISSIONERS SINCE MAKING FORMER REPORT.

C. C. GENUNG Civil Engineer—Services of himself and assistants, making plans, specifications, writing contracts, verifying lines, angles and points on boundary line; laying out and superintending work, expenses of teams for self and Commissioners at various times for supervising and inspecting work		$195 50
Keller Printing Company, for printing and typewriting		12 50
Heilman Machine Works, 16 iron posts		120 00
F. J. Scholz & Son, 3 stone monuments, placed		245 00
Eb Cross, placing 16 iron posts in concrete,		197 00
Expenses of Lt.-Col Amos Stickney, commissioner	$ 34 50	
Services as member of commission	100 00	134 50
Expenses of Gustavus V. Menzies, commissioner	10 00	
Services as member of commission	100 00	110 00
Expenses of Gaston M. Alves, commissioner	7 50	
Services as member of commission	100 00	107 50
Total		$1,122 00

OFFICE OF
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THE LAW ASSOCIATION OF PHILADELPHIA,

No. 219 SOUTH SIXTH STREET,

THER E. HEWITT,
Librarian.

Philadelphia, ... 189

The Honorable
The Attorney General of Kentucky.

Dear Sir:

Is it possible for you to supply our library with a copy of the Transcript of Record and Briefs, if any, in "Indiana v. Kentucky 136 U.S. 479"? We have a complete and very valuable collection of Transcripts of the U. S. S. C. and desire to keep it as near complete as possible. If you can favor us as above we will be greatly obliged (over)

Yours very respectfully
Luther E. Hewitt

Dear Sir. I have
No copy
Att Genl Sy

LAW OFFICE OF
R. H. CUNNINGHAM,
MAIN AND FIRST STS.

DICTATED TO
Vaden Norman
STENOGRAPHER

Henderson, Ky., June 25, 1897.

Luther E. Hewitt, Librarian,

Law Association of Philadelphia, Pa.,

Dear Sir:-

Your favor of the 21st inst. is found on my return after a short absence, asking copies of briefs in the case of Indianna against Kentucky 138 U.S. 479, and I regret very much to say that I cannot furnish them, for the reason that last summer, a fire destroyed my office and all its contents, including what you desire. If Attorney General, Ketcham, cannot furnish them, the only chance which occurs to me, would be to get them from Ex-Governor, J. Procter Knott, now at Danv... I write him to-day, giving your address, and asking if he can... them, to send them to you.

Yours very truly,

R. H. Cunnin...